

STATE OF NEBRASKA  
DEPARTMENT OF HEALTH AND HUMAN SERVICES

Transition Plan to Implement the Settings Requirement for  
Home and Community-Based Services Adopted by CMS on  
March 17, 2014 for Nebraska's Home and Community-Based Waivers

Summary of Comments, Responses to Comments and  
Comments Received

December 1, 2014





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## SUMMARY OF COMMENTS

Comments were received from email, fax, and public meetings. Included herein is a matrix that identifies all 48 comments by date received, applicable waiver directed, commentor identity, source, response (which includes a brief summary of the comment content), whether the plan changed as a result of the comment, and the rationale for why the plan did or did not change. In the interest of full transparency, also included herein are copies of the actual comments received.

Most commenters were supportive of the HCBS Rule and the transition process, but others were concerned about the transition process and fear that their current services will not be funded in the future by HCBS waiver funds. As noted in many comment responses, the Identification and Analysis activities noted in the transition plan are important in this respect as Nebraska evaluates current settings for compliance and analyzes options for transitioning all HCBS settings to become compliant with rule. Those activities include stakeholder input, which will allow such concerns raised by commenters to be addressed in the transition process.

After reviewing and responding to all public comments, Nebraska determined that no substantive changes to the transition plan were necessary. While many great ideas were shared by stakeholders, those ideas can be considered within the context of the current plan. To unnecessarily revise the plan would cause more harmful than helpful to HCBS recipients, as substantive revisions would delay transition activities and submittal of HCBS waiver amendments. To address some formatting and terminology questions and concerns, Nebraska has added Supplemental and Clarifying Information to the final transition plan. However, no substantive changes were made to the plan.

## RESPONSE TO COMMENTS ON HCBS TRANSITION PLAN

#	Date Received	Waiver	Commentor	Source	Response (which includes a Summary of the Comment Content)	Plan Change?	Rational for Why Plan Changed/Not Changed
001	09/16/2014	All	Whitener, Diane	Email	It is not clear what you are referencing by "home based services." Nebraska's developmental disability waivers allow individuals to receive residential support in an array of settings, and individuals are not forced into large group home settings. Large group homes are actually discouraged, with a preference for individuals to live as independently as possible in their own homes. With regard to your concern about "community based services" and your support of "sheltered workshops," we appreciate your opposition to the policies in the HCBS Rule relating to these issues. However, the HCBS Rule is a mandate by the Centers for Medicare and Medicaid Services, and compliance is not optional. We encourage you to participate in stakeholder meetings during the Identification and Analysis activities so that you can contribute to ensuring that adequate integrated community services are available to meet your daughter's needs.	No	This comment was not related to the plan itself, but instead included opposition to the HCBS Rule. Compliance with the HCBS Rule is not optional; thus no changes to the plan were made.
002	09/15/2014	All	Whitener, Gene	Email	We appreciate your concern regarding the HCBS Rule and your belief that "not every person with special needs can function in the community." However, the HCBS Rule is a mandate by the Centers for Medicare and Medicaid Services, and compliance is not optional. We believe that, with proper supports, all people can live in the community. We encourage you to participate in stakeholder meetings during the Identification and Analysis activities so that you can contribute to ensuring that adequate integrated community services are available in your area.	No	This comment was not related to the plan itself, but instead included opposition to the HCBS Rule. Compliance with the HCBS Rule is not optional; thus, no changes to the plan were made.
003	09/26/2014	All	Beck, Cynthia - Midland Area Agency of Aging	Email	We appreciate your comments regarding ways that services in assisted living environments could be improved. These are certainly items that can and should be considered during the Identification and Analysis activities noted in the transition plan. We encourage you to participate in the stakeholder activities to further share your ideas.	No	This comment was not related to the contents of the plan, but instead proposed substantive ways that improvements could be made in assisted living environments. Therefore, no changes were made to the plan.
004	09/28/2014	All	Smith, Charles	Email	We appreciate your comment about "home like" settings. The transition plan is referring to every setting that provides home and community based waiver services in Nebraska. These include a variety of settings, such as a person's home, where various services and supports may be provided. The HCBS Rule requires states to provide justification that these settings are community-based and not institutional in nature. Nebraska will be assessing each provider to ensure compliance.	No	This comment did not relate to the contents of the plan. Instead, it posed a question about settings in which HCBS waiver services can be carried out. Therefore, no changes were made to the plan.
005	09/30/2014	All	Smith, Charles (2)	Email	The content of this comment is a duplicate of Comment #4, and is thus responded to in Response to Comment #4. The Commenter followed up, as he expected a personal response to his comment; DHHS will send the response to Comments #4 and 5 directly to the commenter.	No	This comment did not relate to the contents of the plan. Instead, it posed a question about settings in which HCBS waiver services can be carried out and the comment process. Therefore, no changes were made to the plan.

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006	09/30/2014	All	Nichols, Gayle	Public Meeting	We appreciate your comments addressing guardianship and power of attorney processes. These are important topics that should be addressed with your attorney. The legalities related to guardianships and power of attorney processes are governed by the courts, not the Department of Health and Human Services, and are not part of this transition process. The HCBS Rule will impact the settings in which the Department may use federal funds to pay for community-based services; so, while a guardian may certainly be able to choose services and settings for their children/wards, they may not be able to use public funds to pay for such services if they are not compliant with the HCBS Rule. Thus, we encourage you to participate in the stakeholder activities during the Identification and Assessment activities noted in the transition plan, so that you can provide input into the services that will be available for person(s) for whom you serve as a guardian.	No	This comment was not related to the contents of the plan, but instead was directed at concerns/questions about guardianships and power of attorney processes.
007	09/30/2014	All	Cottingham, Pat	Public Meeting	We appreciate your concerns related to protecting the rights of individuals that may have court-appointed guardians. However, as congregate setting will no longer be funded by HCBS Medicaid waiver funds at the end of the transition period, it is likely they will either be significantly be limited to privately-funded services or cease to exist and this will not be a problem. We will need to be diligent to ensure that individuals with intellectual and developmental disabilities are not unnecessarily transferred to institutional settings (such as Intermediate Care Facilities and Nursing Facilities), as that would be a violation of the Americans with Disabilities Act as interpreted by Olmstead. It will also be important for services coordinators to ensure that team processes are protective of each individual's rights and preferences; that is one of the reasons why we added an Individual Rights regulatory compliance area to the DD Managed Waivers portion of the plan. As you have recognized, the nature of the changes mandated by the HCBS Rule may cause some individuals to act in ways that impede individual rights, so it is imperative that we review our regulations, survey tools and other quality assurance processes to be certain that individual rights continue to be adequately protected.	No	This comment was not related to the contents of the plan, but instead addressed issues related to guardianships and civil rights that might be impacted during the transition process.

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#	Date Received	Waiver	Commentor	Source	Response (which includes a Summary of the Comment Content)	Plan Change?	Rational for Why Plan Changed/Not Changed
008	09/30/2014	All	Hoell, Kathy	Public Meeting	We appreciate your support of the HCBS rule and your concerns about access for citizens to submit public comment, the terminology "community like," the format of the plan and the compliance status of current HCBS waiver settings. Current settings will all be reviewed during the Identification phase of the rule; we have not presumed any setting to be compliant and believe that all must be analyzed. With regard to the terminology "community-like," technically all of the HCBS settings are geographically located within Nebraska communities; however, many of them are institutional in nature and do not meet the compliance standards identified in the HCBS rule. Thus, the term "community-like" was utilized (similar to "community-based") to emphasize the need for such services to be integrated into the community and not institutional in nature. With regard to the format of the plan, the activities were sorted in two different ways based upon discussions with self-advocates; if there is another way that you prefer to see the activities sorted, we would be happy to provide you with an individualized version of the plan. With regard to public input and education, we are firmly committed to such efforts. Not only did we provide multiple traditional avenues for public comment (website, public meetings, email and fax), but the Division of Developmental Disabilities also sent postcards to all individuals in services and provided a toll-free telephone number so that individuals whose intellectual and developmental challenges might preclude them from reading the newspaper or website notice or submitting written or oral comment would have an alternate means with which to have their voices heard. Materials were also provided to service coordinators and providers throughout Nebraska to better equip them to support individuals and their families throughout this process.	No	The notice and comment opportunities exceeded the requirements of the HCBS Rule. There are also numerous opportunities in the plan activities for additional stakeholder education and input. We believe the format of the plan, with its multiple sorted versions, are sufficient to inform stakeholders of planned activities. To the extent that any stakeholder would like assistance in understanding the plan or viewing it in an individualized manner, our staff will provide such assistance. We believe the current format meets the requirements of the HCBS Rule and further delay that would be necessitated by revising the plan would be more harmful than helpful to the people we support with HCBS services, as it would delay transition activities and submittal of HCBS waiver amendments.
009	09/30/2014	All	Bierhaus, Evelyn	Public Meeting	We appreciate your three questions regarding number of clients, cost of transition, and sources of funding for transition activities; those are items that will be addressed during the Identification and Analysis activities noted in the transition plan. We encourage you to participate in the stakeholder activities to further share your ideas on these and other topics.	No	The comment was not related to the contents of the plan, but instead posed three substantive questions related to issues that may be addressed during the Identification and Analysis activities identified in the transition plan.
010	09/30/2014	All	Reed, Kierstin - Resource For Human Development	Public Meeting	We appreciate your support of the HCBS Rule and value the concerns that you raised related to leases, management of personal funds, transportation and the process for evaluating rights restrictions. These issues are important and discussion of those topics will be included in the various stakeholder meetings that are noted in the Identification and Analysis activities in the plan.	No	This comment was supportive of the plan itself, but also included concerns that we will need to ensure are considered/addressed during stakeholder meetings noted in the Identification and Analysis activities in the plan.
011	09/30/2014	All	Meurrens, Bradley - Disability Rights of Nebraska	Public Meeting	We appreciate your preference for a narrative description of activities to be included in the transition plan and the need for education for stakeholders. We believe the current format adequately meets the requirement of the HCBS Rule and provides sufficient detail of the planned activities. Educational components will be included in the various stakeholder activities identified in the Identification and Analysis activities identified in the plan. With regard to accountability, while we will be using various assessment tools as noted in the plan, the HCBS Rule clearly identifies the state as the party responsible for ensuring the HCBS Rule requirements are met. Assessment formats and criteria will be based upon language within the HCBS Rule and subsequent interpretations and guidance issued by the Centers for Medicare and Medicaid Services. Thank you for your support of these efforts.	No	We believe the format of the plan, with its multiple sorted versions, are sufficient to inform stakeholders of planned activities. We appreciate this commenters preference for a narrative version of the planned activities, but we believe the current format meets the requirements of the HCBS Rule and further delay that would be necessitated by revising the plan would be more harmful than helpful to the people we support with HCBS services, as it would delay transition activities and submittal of HCBS waiver amendments.
012	10/08/2014	All	Wolzen, Jeremy	Fax	We appreciate your comments regarding to the good quality of care you currently receive. We encourage you to continue to participate in the stakeholder activities during the transition process.	No	This comment was not related to the contents of the plan, but instead expressed gratitude for a current HCBS waiver service provider.

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#	Date Received	Waiver	Commentor	Source	Response (which includes a Summary of the Comment Content)	Plan Change?	Rational for Why Plan Changed/Not Changed
013	10/08/2014	All	Wolzen, Mary	Fax	We appreciate your comments regarding to the impressive care your son currently receives. We encourage you to continue to participate in the stakeholder activities during the transition process.	No	This comment was not related to the contents of the plan, but instead expressed gratitude for a current HCBS waiver service provider.
014	09/30/2014	All	Beeck, Stacy	Email	We appreciate your comments related to the Community Living and Day Services (CLDS) self-directed services that you utilize within the Developmental Disability HCBS waivers. The purpose of the HCBS Rule's mandated transition plans is to ensure that all services funded by the HCBS waivers are integrated community services. The CLDS self-directed services already meet these requirements and are not institutional in nature in any way. With regard to the questions related to CLDS service and their allowed utilization, we are forwarding your comment to your assigned service coordinator to provide you assistance with addressing those questions and concerns.	No	The comment was not related to the contents of the plan, but instead posed substantive questions related to the individual's use of CLDS services. As these issues are not relevant to the transition plan, we have forwarded the questions and concerns to the assigned coordinator to assist the commenter.
015	10/02/2014	A&D/ TBI	Intermill, Mark - AARP	Email	We appreciate your support of the HCBS Rule and transition plan implementation. With regard to your recommendations for Outreach activities, we greatly appreciate the input of stakeholders such as the coalition and intend to include stakeholders in every phase of the plan and stakeholder activities are specifically identified in many activity areas. With regard to the target dates that include the language "ongoing, " that language emphasizes the need for continued diligence in implementing those activities; for each of those items, the absolute compliance date is dictated by the HCBS Rule itself as March 17, 2019, but we feel that they are not activities that can ever be considered "complete" and without "ongoing" diligence in performing those identified activities there is a significant risk of regression (so even after full compliance is achieved, many of these activities must continue forward indefinitely, similar to current quality assurance activities). With regard to your comments in paragraphs 5, 7 and 8, the Identification regulatory compliance area activities are targeted to identifying all potentially non-compliance settings and the Analysis activities are targeted to working with stakeholders to transition services in those settings to be compliant with the HCBS Rule or discontinued and replaced by other services to meet the needs of the individuals served in those settings; the target dates for performance measures are delayed a bit as you noted, because we believe that stakeholder input and CMS guidance in developing performance measures is important to ensure that we have adequate and meaningful performance measures. We do not intend to change the transition plan itself to further define outreach activities and identification activities you addressed in your comments because the delay that would be necessitated by such a revision would be more harmful than helpful to transition process and the people we support with HCBS waiver services, but we certainly share your commitment to these areas and your comments will be considered as we implement those specific activities.	No	We believe the format of the plan adequately addresses opportunities for stakeholder input and performance measures. We appreciate this commenters recommendations, but we also believe we can address those concerns within the parameters of the current plan and believe the current plan meets the requirements of the HCBS Rule and further delay that would be necessitated by revising the plan would be more harmful than helpful to the people we support with HCBS services, as that would delay transition activities and submittal of HCBS waiver amendments.
016	10/08/2014	All	Rasmussen, Judy	Mail	We appreciate you sharing your personal story, and your support of HCBS services in Nebraska. As you receive HCBS services in your own home, those services already meet the HCBS Rule requirements of being community-based and, thus, should not be impacted by the transition plan activities. However, we encourage you to continue to participate in stakeholder activities throughout the transition process to further share your comments and concerns.	No	This comment did not relate to the contents of the plan. Rather, the comment was supportive of HCBS services this person received in their own home.

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017	10/09/2014	All	Mayleben-Flott, Kristin - Nebraska Planning Council	Mail	We appreciate your support of the HCBS Rule and transition plan implementation. With regard to your concern about the Division of Developmental Disabilities not including any external groups in the various phases of the plan, the Division of Developmental Disabilities strongly agrees with you that external input is necessary and every phase of the plan for the developmental disability waiver includes external input. The Provider Self-Assessment Tool and Self-Advocate/Family Planning Survey drafts have already been shared with the specific external advocacy entities that you reference, as well as several other advocacy entities that are stakeholders in this process. Additionally, the Division will not only use standard required routes for publication of the stakeholder meetings referenced in the plan (newspaper, website, etc.), but it will also send notice of those activities directly to the various advocacy entities to ensure that they and the people they represent are included in this process. All interested stakeholders, including the Developmental Disability Advisory Committee and the Nebraska Planning Council on Developmental Disabilities, will be involved in each phase of the transition process. While we appreciate your preference for more detailed explanations in the transition plan, we do not intend to change the transition plan itself; we believe the current plan is compliant with the HCBS Rule and the delay that would be necessitated by such revisions would be more harmful than helpful to transition process and the people we support with HCBS waiver services. The stakeholder activities identified in the plan should provide any additional education or clarification that stakeholders prefer, and stakeholder input is actually expected to further determine specific activities in the various regulatory compliance areas noted in your comments; we certainly share your commitment to these areas and trust that the Council will continue to be involved as we implement the transition activities.	No	We appreciate this commenters concerns related to the format, level of detail, and inclusion of stakeholders in the plan, but we believe we can address those concerns within the parameters of the current plan and believe the current plan meets the requirements of the HCBS Rule and further delay that would be necessitated by revising the plan would be more harmful than helpful to the people we support with HCBS services, as that would delay transition activities and submittal of HCBS waiver amendments.
018	10/14/2014	All	Ehrke, Margaret	Email	We appreciate and agree with your philosophy on person-centered services and self-expression and thank you for sharing information relating to your son and your concerns about his services. The purpose of this public notice and comment period are to develop a transition plan for Nebraska to come into compliance with the HCBS Rule. Home and Community Based Services funded by Medicaid must be provided in an integrated community setting. To the extent you have concerns about current services and regulations, we are forwarding your comment to you your assigned service coordinator to assist you. Many opportunities for public input regarding the types of services that will be funded in the future will be discussed during Identification and Analysis activities noted in the transition plan. We encourage you to participate in the stakeholder activities to further share your ideas.	No	The comment was not related to the contents of the plan, but instead posed substantive questions related to the individual's use of CLDS services. As these issues are not relevant to the transition plan, we have forwarded the questions and concerns to the assigned coordinator to assist the commenter.
019	10/15/2014	A&D/TBI	Nebraska Health Care Association	Email	We appreciate and agree with your philosophies on consumer choice and autonomy. We appreciate your recommendations regarding what types of settings should be considered HCBS compliance, your support of stakeholder input during the transition process, and your recommendation related to consideration for settings which are deemed noncompliant. The issues you have raised are all issues that are appropriate for consideration during the stakeholder activities identified in the Identification, Analysis and Remediation phases of the transition plan. We trust that the Nebraska Healthcare Association will participate in the stakeholder activities to further share your ideas and advocate for the individuals whose interests you represent.	No	This comment was not related to the contents of the plan itself, but instead provided valuable recommendations to be considered during the Identification, Analysis and Remediation phases of the transition plan in its current state.

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020	10/15/2014	All	Younglund, Bertha	Mail	We appreciate your comments regarding to the exemplary care you currently receive. We are also pleased that your social worker/service coordinator was successful in reaching out to you so that you could provide your comments during this process, as it affirms that our outreach efforts using an array of methods have been successful. Your input is important and we encourage you to continue to participate in the stakeholder activities during the transition process.	No	This comment was not related to the contents of the plan, but instead expressed gratitude for HCBS waiver services.
021	10/15/2014	All	People First of Nebraska	Email	We appreciate and agree with your comments regarding including individuals that receive services in the transition process. This is of utmost importance to us. The various stakeholder meetings in the Identification and Assessment activities noted in the transition plan are intended to gather input on the very items described in your comments. As with all advocacy entities that we are aware of with an interest in the transition plan, we will be certain to include People First of Nebraska in all communications relating to transition plan activities.	No	This comment was not related to the contents of the plan, but instead expressed support for continued participation by self-advocates in this process. There are numerous opportunities in the plan activities for additional stakeholder education and input. Thus, no changes to the plan were made.
022	10/15/2014	All	HCBS Coalition	Email	We similarly appreciate the HCBS Coalition and its willingness to meet with us and remain intimately involved in this process. The Coalition has already begun to offer valuable input on some of the draft assessment tools that are being considered, and your participation in these processes and activities is immensely valuable. Your idea to share the plan in alternative formats is great and we will work with you to identify ways in which we can assure that all interested parties can participate thoroughly, including providing material in alterative language formats. We appreciate your concerns and recommendations regarding the terminology "community like," the format of the plan and the compliance status of current HCBS waiver settings. Current settings will all be reviewed during the Identification phase of the rule; we have not presumed any setting to be compliant and believe that all must be analyzed. With regard to the terminology "community-like," technically all of the HCBS settings are geographically located within Nebraska communities; however, many of them are institutional in nature and do not meet the compliance standards identified in the HCBS rule. Thus, the term "community-like" was utilized (similar to "community-based") to emphasize the need for such services to be integrated into the community and not institutional in nature. While we appreciate that you would like the current quality improvement processes outlined in the plan, we have chosen not do to that; that information can be made available to the Coalition and other stakeholders during the transition processes and does not need to be included in the plan itself. We appreciate your interest in the Coalition being involved in quality improvement processes and your recommendation to adopt the National Core Indicators, and those are recommendations that we can consider, although we do not believe they are necessary to be included in the transition plan. Your last three bulleted comments do not relate to the transition plan itself, but instead identify ways in which we can ensure stakeholders are well informed. The stakeholder comments and waiver amendments/renewals will be posted on our website, and we agree that they should be accessible from the HCBS Transition Plan website. We have also compiled a list of stakeholders who have indicated an interest to be kept informed of the transition process and will ensure that the Coalition members are added to that list when information relating to the transition plan activities is shared.	No	We believe the plan adequately addresses the issues raised by this commenter; while we appreciate this commenters recommendations, we also believe we can address those concerns within the parameters of the current plan and believe the current plan meets the requirements of the HCBS Rule and further delay that would be necessitated by revising the plan would be more harmful than helpful to the people we support with HCBS services, as that would delay transition activities and submittal of HCBS waiver amendments.



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023	10/15/2014	All	Disability Rights Nebraska	Email	We appreciate your preference for an alternative format with a greater level of detail regarding the activities to be included in the transition plan and the need for education for stakeholders. We believe the current format adequately meets the requirement of the HCBS Rule and provides sufficient detail of the planned activities. Educational components will be included in the various stakeholder activities identified in the plan. We plan to work with currently identified stakeholders, which includes Disability Rights Nebraska, to tailor stakeholder engagement activities to meet the needs of the various stakeholders instead of determining those activities independent of stakeholder input. With regard to the assessment of site characteristics and the appropriate response thereto, your substantive recommendation may be considered during the Identification, Analysis and Remediation phases of the transition plan. We do not intend to change the transition plan itself to address DRN's recommendations; we believe the transition plan meets the requirements in the HCBS Rule and the delay that would be necessitated by such a revision would be more harmful than helpful to transition process and the people we support with HCBS waiver services. We certainly share your commitment to people impacted by the HCBS Rule and value your partnership in this process.	No	We believe the plan adequately addresses the issues raised by this commenter; while we appreciate this commenters recommendations, we also believe we can address those concerns within the parameters of the current plan and believe the current plan meets the requirements of the HCBS Rule and further delay that would be necessitated by revising the plan would be more harmful than helpful to the people we support with HCBS services, as that would delay submittal of HCBS waiver amendments.
024	10/15/2014	All	Hoogeveen, Brett	Email	We appreciate your comment pertaining to HCBS Rule's standard for addressing the characteristics of a setting in defining whether it is community-based. We agree that evaluating each setting on the experience of recipients is important and we will continue to follow the CMS guidance on this topic. We encourage you to continue to participate in the stakeholder activities throughout the transition process to further share your ideas.	No	This comment did not relate to the contents of the plan. Instead, it was supportive of the HCBS Final Rule. Therefore, no changes have been made.
025	10/15/2014	All	Mason, Shawna	Email	We appreciate your support of the current transition plan, and your comments regarding ways that environments could be improved. These are certainly items that can and should be considered during the Identification and Analysis activities noted in the transition plan. We encourage you to participate in the stakeholder activities to further share your ideas.	No	This comment was not related to the contents of the plan itself. Instead it posed ways that improvements could be made to ensure more comfortable environments.
026	10/07/2014	All	Angus, Mary	Public Meeting	We appreciate your comment on the format of the plan. We believe the current format adequately meets the requirement of the HCBS Rule and provides sufficient detail of the planned activities. We encourage you to participate in the stakeholder activities to further share your ideas.	No	We appreciate this commenter's concerns regarding the format of the plan. We believe the format of the plan, with its multiple sorted versions, are sufficient to inform stakeholders of planned activities. We believe the current format meets the requirements of the HCBS Rule and further delay that would be necessitated by revising the plan would be more harmful than helpful to the people we support with HCBS services, as that would delay transition activities and submittal of HCBS waiver amendments.
027	10/07/2014	All	Kaminski, Julie	Public Meeting	We appreciate your comments, particularly in how you described specific examples that we will be challenged with as we go through the Identification and Analysis activities noted in the plan. You are correct that both memory care services and general assisted living situations will be challenging to evaluate and perhaps adapt to be compliant with the HCBS Rule. We will utilize the definitions and guidelines in the HCBS Rule, along with guidance that we hope to receive from CMS, to work through these issues with the various stakeholders. We encourage you to participate in the stakeholder activities to further share your comments and concerns throughout the transition process.	No	This comment raised several challenges relating to memory care and assisted living settings that will be addressed in the Identification and Assessment activities noted in the transition plan. Thus, there is no need to adapt the transition plan.

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028	10/07/2014	All	Eastern Nebraska Office on Aging	Public Meeting	We appreciate your comment about transportation challenges. We realize that transportation is an issue in Nebraska and that cost and accessibility will need to be addressed during the Assessment activities noted in the transition plan. We urge you to continue to participate in the stakeholder activities to farther address your concerns.	No	This comment did not relate to the contents of the plan, but instead posed a questions about the cost and accessibility of transportation.
029	10/07/2014	All	Cox, Janelle	Public Meeting	As noted in your comments, personal preferences and utilization of natural/informal supports are important issues to be considered as we implement the new HCBS Rule. You are also correct that we must continue to meet the health and safety assurances required in HCBS waivers, and that is going to require a delicate balance with the new HCBS Rule requirements - particularly as we work to ensure safety for individuals with dementia. We appreciate that you are thoughtfully considering these challenges and we encourage you to continue to participate in stakeholder activities to further share your ideas.	No	This comment did not relate to the contents of the plan, but instead posed a concerns about personal preferences, utilization of natural/informal supports and potential conflicts with CMS health and safety assurances. Thus, there is no need to adapt the transition plan, as these are all issues that will be addressed in the Assessment activities noted in the plan.
030	10/07/2014	All	Chittenden, Michael - ARC of	Public Meeting	We appreciate your support of the HCBS rule and your concerns about access for citizens to submit public comment, the terminology "community like," the format of the plan, responsibility for and transparency of the various assessments and compliance requirements, and the compliance status of current HCBS waiver services. Current settings will all be reviewed during the Identification and Analysis phases of the rule; we have not presumed any setting to be compliant and believe that all must be analyzed. With regard to the terminology "community-like," technically all of the HCBS settings are geographically located within Nebraska communities; however, many of them are institutional in nature and do not meet the compliance standards identified in the HCBS rule. Thus, the term "community-like" was utilized (similar to "community-based") to emphasize the need for such services to be integrated into the community and not institutional in nature. With regard to the format of the plan, we appreciate that you would prefer an alternative format that is more specific in nature; however, we believe that the current transition plan meets the requirements of the HCBS Rule and allows for sufficient flexibility to include the input of stakeholders and CMS guidance that is anticipated. With regard to public input and education, we are firmly committed to stakeholder input. While it is unfortunate that one scheduled public meeting had a venue change, we made every effort to ensure that individuals were able to attend that meeting through adequate redirection to the revised site. In addition to the one meeting that had the venue change, we also provided several other meeting options and not only did we provide multiple traditional avenues for public comment (website, public meetings, email and fax), but the Division of Developmental Disabilities also sent postcards to all individuals in services and provided a toll-free telephone number so that individuals whose intellectual and developmental challenges might preclude them from reading the newspaper or website notice or submitting written or oral comment would have an alternate means with which to have their voices heard. Materials were also provided to service coordinators and providers throughout Nebraska to better equip them to support individuals and their families	No	We believe that notice and comment opportunities exceeded the requirements of the HCBS Rule. There are numerous opportunities in the plan activities for additional stakeholder education and input throughout the transition process. We believe the plan provides sufficient specificity and is sufficient to inform stakeholders of planned activities, while providing ample opportunity to be flexible within those activities to consider stakeholder input and additional CMS guidance that may be received. To the extent that any stakeholder would like assistance in understanding the plan or viewing it in an individualized

## RESPONSE TO COMMENTS ON HCBS TRANSITION PLAN

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			Nebraska		throughout this process. As indicated throughout the transition plan, stakeholder input is not limited to the development of the plan, but continued stakeholder involvement is also provided for throughout many activities within the plan. With regard to responsibility and transparency for assessments and compliance, the HCBS Rule and HCBS standards clearly hold the State responsible for implementation of the requirements of the HCBS Rule; while stakeholder input will be obtained and considered, the State cannot delegate their compliance responsibilities to third parties. Compliance will be reviewed by CMS when it does its standard HCBS reviews, and all assessment and compliance documents are public records that will be available for review. It is our intention to post all documents related to the transition plan activities on our website, but paper versions may also be requested through the standard public records processes as well. We are significantly concerned about your comments related to current planning processes and services that you believe are not person-centered - particularly as you have never shared these concerns with us in your position as Executive Director of the ARC of Nebraska or as a member of the Governor's DD Advisory Committee. The Division of Developmental Disabilities has routine quality assurance processes and targeted monitoring of services coordination activities to ensure that person-centered practices are being utilized; additionally, the Division transitioned its funding to individual-directed Individualized Budget Amounts several years ago to ensure that individuals and their families were empowered to choose services that meet their needs and preferences (with Individual Family Planning meetings being held without provider staff present to ensure that those choices are made without undue provider influence.) Thus, if you have specific examples of situations where this is not occurring, please report those complaints to the Division's Survey and Certification Team at <a href="http://dhhs.ne.gov/developmental_disabilities/Pages/ADDIF-Community.aspx">http://dhhs.ne.gov/developmental_disabilities/Pages/ADDIF-Community.aspx</a> or call 1 (877) 667-6266.		manner, our staff will provide such assistance (and as reflected in numerous comments, that personal outreach and support in participation actually occurred). We believe the current format meets the requirements of the HCBS Rule and further delay that would be necessitated by revising the plan would be more harmful than helpful to the people we support with HCBS services, as that would delay transition activities and submittal of HCBS waiver amendments.
031	10/07/2014	All	Brooks, Janine	Public Meeting	We appreciate your comment regarding your personal experiences with services in Nebraska. This purpose of this transition plan is to ensure that the home and community based services waivers being operated currently are compliant with the HCBS Rule, not to expand current service or create new HCBS waivers. Thus, this plan will not be revised as recommended.	No	This comment was not related to the contents of the plan. Rather, it posed ideas for future services. This purpose of this transition plan is to ensure that the home and community based services waivers being operated currently are compliant with the HCBS Rule, not to expand current service or create new HCBS waivers. Thus, this plan will not be revised as recommended.

## RESPONSE TO COMMENTS ON HCBS TRANSITION PLAN

#	Date Received	Waiver	Commentor	Source	Response (which includes a Summary of the Comment Content)	Plan Change?	Rational for Why Plan Changed/Not Changed
032	10/07/2014	All	Name Not Provided	Public Meeting	We appreciate your concern regarding advocacy support for self-advocates. Many individuals with disabilities are competent to make decisions about their services without the appointment of a guardian; however, all individuals supported by HCBS waiver services impacted by this transition plan are supported by service coordinators whose role includes supporting individuals in advocating for services that meet their needs and preferences. With regard to the location of the meeting, clearly you were present so you were able to find the location; we apologize if that was difficult for you and note that we also provided several other meeting options and not only did we provide multiple traditional avenues for public comment (website, public meetings, email and fax), but the Division of Developmental Disabilities also sent postcards to all individuals in services and provided a toll-free telephone number so that individuals whose intellectual and developmental challenges might preclude them from reading the newspaper or website notice or submitting written or oral comment would have an alternate means with which to have their voices heard. Materials were also provided to service coordinators and providers throughout Nebraska to better equip them to support individuals and their families throughout this process.	No	This comment was not related to the contents of the plan, but rather addressed concerns relating to support for self-advocates who do not have guardians and expressed dissatisfaction with the venue for the meeting. No revisions were necessary related to this comment.
033	10/07/2014	All	Chittenden, Michael - ARC of Nebraska - Second Comment	Public Meeting	We appreciate your comment regarding the venue choice for one of the public stakeholder meetings and your belief that a map is not going to help, but signs and arrows should be used instead. While this will be taken into consideration with future stakeholder meetings, it is important to note that we also provided several other meeting options and not only did we provide multiple traditional avenues for public comment (website, public meetings, email and fax), but the Division of Developmental Disabilities also sent postcards to all individuals in services and provided a toll-free telephone number so that individuals whose intellectual and developmental challenges might preclude them from reading the newspaper or website notice or submitting written or oral comment would have an alternate means with which to have their voices heard. Materials were also provided to service coordinators and providers throughout Nebraska to better equip them to support individuals and their families throughout this process.	No	This comment was not related to the contents of the plan, but rather addressed the venue choice for one of the public meetings and recommended actions to expand accessibility. The outreach to individuals with cognitive disabilities exceeded the requirements in the HCBS rule and was specifically targeted to ensure that stakeholders with cognitive challenges were directly included in the process with mechanisms to respond that met their needs (i.e. email or telephonic comments with support available from their service coordinator.) These efforts will continue for future stakeholder activities and evolve as needed to ensure full accessibility of participation.
034	10/07/2014	All	Swanson, Sara	Public Meeting	We appreciate your recommendation to implementing the National Core Indicators in Nebraska. The purpose of this transition plan is specifically limited to compliance with the HCBS Rule; the National Core Indicators would not be a sufficient assessment tool to accomplish this task. We will consider an array of assessment tools during the Identification and Analysis activities noted in the transition plan, and we encourage you to participate in the stakeholder activities to continue to provide your input and recommendations throughout the implementation of the plan.	No	This comment did not relate to the contents of the plan, but rather recommended utilization of the National Core Indicators tool.
035	10/07/2014	All	Angus, Mary Second Comment	Public Meeting	We appreciate your comment regarding the transparency of the transition process. Transparency during this process is of utmost importance to us. In regard to your inquisition about the public comments received during the initial stakeholder input process; the comments received will be formatted and available to the public on the DHHS website as soon as the responses are prepared, no later than December 1, 2014.	No	This comment did not relate to the contents of the plan, but rather questioned where the public comments were going to be available for review.

## RESPONSE TO COMMENTS ON HCBS TRANSITION PLAN

#	Date Received	Waiver	Commentor	Source	Response (which includes a Summary of the Comment Content)	Plan Change?	Rational for Why Plan Changed/Not Changed
036	10/07/2014	All	Angus, Mary Third Comment	Public Meeting	We appreciate your comment regarding the provider self assessment tool that will be utilized in the Identification activities of the plan by providers of DD managed waivers. The provider self assessment tool is finalized and is in the process of being sent out to specialized providers. While the initial target date for completion was September 20, 2014, the finalization of the tool was delayed to provide the newly created HCBS Coalition an opportunity for input and to incorporate guidance issued by CMS.	No	This comment was a question about a targeted completion date in the transition plan. The targeted compliance dates in the plan are aggressive, with anticipated compliance with the rule being attempted well in advance of the CMS deadline. Thus, if minor delays occur in meeting targeted deadlines when unanticipated activities occur (such as the creation of a new stakeholder group, the HCBS Coalition), such delays will not impede the State's ultimate compliance beyond the HCBS Rule requirements. Thus, it is not necessary to revise the plan for this purpose.
037	10/07/2014	All	Brooks, Janine Second Comment	Public Meeting	Nebraska HCBS waiver funded services offer various supports to allow individuals to live, work and recreate as independently in their communities as possible; however, as you noted in this comment and your prior comment (#31) your daughter may not be eligible for those services. Several of the services you mention in this comment are not services provided by Nebraska's HCBS waivers and are not included in this transition plan and processes. To the extent that you or your daughter are receiving HCBS services that are not compliant with the HCBS Rule, those will be addressed during the Identification and Analysis activities noted in the transition plan. The purpose of the plan, however, is not to expand current eligibility groups or services, but to ensure that current HCBS waivers meet the requirements of the HCBS Rule. We encourage you to participate in the stakeholder activities to continue to provide your input and recommendations throughout this process. To the extent that you are having difficulty in reviewing the plan to determine how to participate and provide stakeholder input, we will be maintaining the contact options noted in the transition plan so that our staff are available to assist you and others with similar challenges. You may contact us through any of the contact options noted on page 5 of the transition plan or by contacting our local offices, and our staff will personally assist you in this regard.	No	We believe that notice and comment opportunities exceeded the requirements of the HCBS Rule. There are numerous opportunities in the plan activities for additional stakeholder education and input throughout the transition process. We believe the plan provides sufficient specificity and is sufficient to inform stakeholders of planned activities, while providing ample opportunity to be flexible within those activities to consider stakeholders input and additional CMS guidance that may be received. To the extent that any stakeholder would like assistance in understanding the plan, viewing it in an individualized manner, or need assistance in participating in the plan activities and processes our staff will provide such assistance (and as reflected in numerous comments, that personal outreach and support in participation actually occurred). We believe the current format meets the requirements of the HCBS Rule and further delay that would be necessitated by revising the plan would be more harmful than helpful to the people we support with HCBS services, as that would delay transition activities and submittal of HCBS waiver amendments.
038	10/07/2014	All	Eastern Nebraska Office on Aging Second Comment	Public Meeting	We appreciate your comments regarding the challenging timeline for full compliance. All states must be in full compliance with the HCBS Rule by March 17, 2019. The targeted deadlines within the transition plan will allow for full compliance by this date, with some flexibility to adapt to evolving challenges and anticipated CMS guidance. We appreciate that this will be a difficult process and understand that some of the people you serve will not be supportive of this process, and we hope to encourage collaboration through stakeholder activities noted in the transition plan.	No	This comment was not related to the contents of the plan itself, but posed concerns about the challenging timeline for full compliance and the anticipated opposition from stakeholders.

## RESPONSE TO COMMENTS ON HCBS TRANSITION PLAN

#	Date Received	Waiver	Commentor	Source	Response (which includes a Summary of the Comment Content)	Plan Change?	Rational for Why Plan Changed/Not Changed
039	09/29/2014	All	Tim Kolb	Public Meeting	We appreciate your comments regarding the need for a distinction as to what will meet the definition of community in the HCBS Rule and your concerns about DD day services. Current settings will all be reviewed during the Identification and Analysis phases of the rule; we have not presumed any setting to be compliant and believe that all must be analyzed. With regard to the terminology "community-like," technically all of the HCBS settings are geographically located within Nebraska communities; however, many of them are institutional in nature and do not meet the compliance standards identified in the HCBS rule. Thus, the term "community-like" was utilized (similar to "community-based") to emphasize the need for such services to be integrated into the community and not institutional in nature. As you noted, we will be utilizing the standards set in the HCBS Rule and considering CMS guidance received subsequent to the issuance of the rule in making those decisions. With regard to your concerns about DD day services and their accessibility, the transition plan addresses only current HCBS waiver services and their compliance with the new settings rule - it does not address funding for new services for people; thus, those concerns will not likely be addressed in this transition plan.		While this commenter, and a few other commenters, would perhaps prefer that a term other than "community-like" be used in the transition plan; use of that term is consistent with the intent and requirements of the HCBS Rule and the State will be interpreting compliance standards in accordance with the HCBS Rule and related CMS guidance. We appreciate these commenters' support of fully-integrated community services. However, we believe the current format meets the requirements of the HCBS Rule and further delay that would be necessitated by revising the plan would be more harmful than helpful to the people we support with HCBS services, as that would delay transition activities and submittal of HCBS waiver amendments.
040	09/29/2014	All	Lisa Mercer	Public Meeting	We appreciate your comment about complaint reporting in regard to DD providers. The Division of Developmental Disabilities currently has a system in place for complaints relating to community services. You may go online and fill out a complaint form at <a href="http://dhhs.ne.gov/developmental_disabilities/Pages/aDDIF-Community.aspx">http://dhhs.ne.gov/developmental_disabilities/Pages/aDDIF-Community.aspx</a> or call 1 (877) 667-6266. We encourage you to continue to participate in the stakeholder activities to further share your ideas.	No	This comment did not relate to the contents of the plan. Instead, it posed a question about complaint reporting. Thus, no changes to the plan have been made.
041	09/29/2014	All	Zinnell, Linda	Public Meeting	We appreciate your comment regarding qualities in a residential setting that are considered Home and Community-Based with the final HCBS rule. Each provider of Home and Community Based Services will be assessed during the Identification and Analysis portions of the plan. Safety of the individuals receiving services is of extreme importance and will be taken into consideration when implementing the transition plan. We encourage you to participate further in stakeholder activities to share your ideas and concerns.	No	This comment was not related to the contents of the plan, but instead directed to the HCBS Rule itself. Compliance with the HCBS Rule is not optional; thus, no changes to the plan were made.
042	09/29/2014	All	Name Not Provided	Public Meeting	We appreciate your comment addressing community settings; the settings requirements in the HCBS Rule are not optional, and the State's ability to use federal HCBS waiver funding for services that do not meet those requirements will be terminated by the compliance date. Thus, the Identification and Analysis activities described in the transition plan will be very important in addressing concerns such as you have raised. We encourage you to participate in stakeholder activities throughout the transition process to share your comments and concerns.	No	This comment was not related to the contents of the plan, but instead raised concerns about the HCBS final rule itself. Therefore, no changes to the plan were made.

## RESPONSE TO COMMENTS ON HCBS TRANSITION PLAN

#	Date Received	Waiver	Commentor	Source	Response (which includes a Summary of the Comment Content)	Plan Change?	Rational for Why Plan Changed/Not Changed
043	09/29/2014	All	Dawn Hansen	Public Meeting	We appreciate your comments regarding personal choice of activities in community services and surveys and projections regarding assisted living services. With regard to personal choices mandated in recreation and employment activities, those relate to person-centered practices that are mandated by the HCBS Rule but not allowed a transition period and thus not included in the transition plan. You may address your concerns regarding those issues to <a href="http://dhhs.ne.gov/developmental_disabilities/Pages/aDDIF-Community.aspx">http://dhhs.ne.gov/developmental_disabilities/Pages/aDDIF-Community.aspx</a> or call 1 (877) 667-6266; such concerns or questions may also be addressed to service coordinators at our local offices. With regard to your concern about assisted living services no longer being available, we believe that assisted living services may need some adaptations to come into compliance with the HCBS Rule, but it is premature to presume that current providers are going to decrease their services at this time and we have not done surveys or made any projections related to that at this time.	No	This comment was not related to the contents of the plan, but instead related to person-centered practice mandates that are not part of the HCBS Rule transition plan and to concerns about assisted living services being reduced due to the requirements of the HCBS Rule. Thus, no changes to the plan were made.
044	09/30/2014	All	Name Not Provided	Public Meeting	We appreciate your concerns that the HCBS Rule will negatively impact assisted living services. The settings requirements in the HCBS Rule are not optional, and the State's ability to use federal HCBS waiver funding for services that do not meet those requirements will be terminated by CMS by the compliance date. Thus, the Identification and Analysis activities described in the transition plan will be very important in addressing concerns such as you have raised. We encourage you to participate in stakeholder activities throughout the transition process to share your comments and concerns.	No	This comment was not related to the contents of the plan, but instead voiced concerns that the HCBS Rule would negatively impact assisted living services. Therefore, no changes to the plan were made.
045	09/29/2014	All	Ludlow, Jane	Public Meeting	We appreciate your comment about transportation costs. Current rate methodologies include consideration of transportation costs; as service expectations evolve, the rate methodology will need to be reviewed as well to consider transportation costs, staffing, etc. Evaluation of what it will take to revise current services to come into compliance with the HCBS Rule will occur during the Analysis activities indicated in the transition plan, and rate methodologies are logically included in that evaluation.	No	This comment did not relate to the contents of the plan, but instead posed a question about transportation costs. Thus, no change to the plan was made.
046	09/29/2014	A&D/ TBI	Briggs, Sarah	Public Meeting	You are correct that the outcome of the Identification activities will result in a list of settings that are likely not compliant with the HCBS settings requirements. Those decisions will be made in accordance with the HCBS Rule and subsequent CMS guidance (some of which we are still waiting for) and we will include all related documents and processes on our DHHS website, as well as communications with stakeholders. However, it is important to note that we also included Analysis activities in our plan as well to allow us a time period to determine whether settings can be revised to be compliant with the HCBS Rule or whether they meet the heightened scrutiny requirements identified in the HCBS Rule (instead of just automatically terminating all non-compliant services).	No	This comment was a continuation of a discussion of processes in the plan and did not include a recommendation to change the plan.
047	09/30/2014	All	Name Not Provided	Public Meeting	We appreciate your comments regarding personal choice of activities in community services. With regard to personal choices mandated in recreation and employment activities, those relate to person-centered practices that are mandated by the HCBS Rule but not allowed a transition period and thus not included in the transition plan. You may address your concerns regarding those issues to <a href="http://dhhs.ne.gov/developmental_disabilities/Pages/aDDIF-Community.aspx">http://dhhs.ne.gov/developmental_disabilities/Pages/aDDIF-Community.aspx</a> or call 1 (877) 667-6266; such concerns or questions may also be addressed to service coordinators at our local offices.	No	This comment was not related to the contents of the plan, but instead related to person-centered practice mandates that are not part of the HCBS Rule transition plan. Thus, no changes to the plan were made.

### RESPONSE TO COMMENTS ON HCBS TRANSITION PLAN

#	Date Received	Waiver	Commentor	Source	Response (which includes a Summary of the Comment Content)	Plan Change?	Rational for Why Plan Changed/Not Changed
048	09/29/2014	All	Lien, Maxine	Public Meeting	We appreciate your comment regarding person centered planning and appreciate your advocacy on behalf of your son and others served by the DD system. You are correct that service coordinators and the teams they support sometimes make incorrect judgments about what constitutes person centered planning, despite the new planning tools and training that has been implemented. You are also correct that, while we train and equip our front line managers across Nebraska to support their service coordination teams in this respect, the DD Administrative Team (including the director) are all willing to receive comments and complaints and be involved in creating and encouraging solutions where necessary. This comment, similar to the one it is in response to (#47) are related to person centered practices that, while mandated by the HCBS Rule, are already effective and not allowed to be part of the transition plan and process. If you have concerns relating to person centered practices, please contact your service coordinator, their supervisor or our central office at 1-877-867-6266.	No	This comment was not related to the contents of the plan, but instead related to person-centered practice mandates that are not part of the HCBS Rule transition plan. Thus, no changes to the plan were made.



## DHHS HCBS Public Comments

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**From:** dianmarie@centurylink.net  
**Sent:** Monday, September 15, 2014 11:11 PM  
**To:** DHHS HCBS Public Comments  
**Subject:** Federal rule requiring home and community based services to be provided in "community-like" settings

Sir,

In regard to the ruling requiring home and community based services to be provided in "community-like" settings:

First, I will address the issue of "home based services". I must ask the obvious question: How can "home based services" be taken out of the home and into the community and still be "home based"? Seems like an impossibility to me! This does not affect my special needs adult daughter right now, but I suspect it could in the future, and I don't want to have to worry about what that could mean. A question that comes to mind is, "Will my daughter and others like her be forced into large group home settings in the future instead of smaller, more home-like environments?"

And now I will address the issue of "community based services". It is my opinion that this will be very harmful to many of the special needs adults in Nebraska.

From my observation there are many in the special needs adult community who do not do well out in the "community", some because of "sensory overload", others because they haven't the ability to communicate well enough to hold a normal job, or socialize appropriately with other people, to be able to work with others out in the "community". I believe such persons derive great benefit from "sheltered" workshops which are supervised by a trained staff. These persons gain self esteem and pride from being able to work and earn money much like other people. I believe that this is good for them as it will make them happier and more well adjusted members of our community.

Thank you for allowing me to comment on this ruling.

Sincerely,

Diane Whitener  
Omaha, Nebraska  
(402) 896-1798

## DHHS HCBS Public Comments

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**From:** G K WHITENER Owner <gkw1949@centurylink.net>  
**Sent:** Tuesday, September 16, 2014 8:33 AM  
**To:** DHHS HCBS Public Comments  
**Subject:** Final Rule CMS 2249-F

I am writing to express my concern about the effect of legislation CMS 2249-F and CMS 2296-F.

I am aware that not every person with special needs can function in the community. Some persons needs are best served in a controlled environment. Those persons, who can function in a controlled environment, cannot function in the general community.

I feel that the legislation tries the "one approach fits all". Please do not place a segment of the special needs population in an environment that will be counter productive to these individuals. In essence and in fact, you are doing a greater injustice to those special needs individuals that best function in a controlled environment.

I can't imagine the stress and unhappiness a segment of the special needs population will be forced to endure if this legislation is followed.

Gene Whitener  
5066 Oaks Lane  
Omaha, NE 68137

Parent of a special needs young adult.

## DHHS HCBS Public Comments

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**From:** Decker, Gwenda  
**Sent:** Monday, September 22, 2014 9:29 AM  
**To:** DHHS HCBS Public Comments  
**Subject:** FW: Transition Plan

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Thanks,  
Gwen Decker, AD Waiver Program Coordinator  
DHHS Medicaid and Long Term Care  
301 Centennial Mall South, 5<sup>th</sup> floor  
Lincoln, NE 68509-5026  
402-471-9202 Fax 402-471-6352  
[Gwenda.decker@nebraska.gov](mailto:Gwenda.decker@nebraska.gov)

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**From:** Beck, Cynthia  
**Sent:** Friday, September 19, 2014 5:22 PM  
**To:** Decker, Gwenda  
**Subject:** Transition Plan

I have a few thoughts about improvements that could be made in AL's-

Med carts are very institutional.

Food-More choice about when and where they can eat and some way to assure that it is prepared properly and appealing (at least to most residents). It seems like food in AL's attached to NF's is more likely to be poor quality and cold (since it comes from across the building). Availability of condiments to season their food more to the client's preference. (Hot sauce, Mrs. Dash, etc.). Requiring containers that the client can open themselves-no packets. Accessible toaster, microwave, coffee pot, milk with a variety of snacks they can help themselves to.

Activities-Separate programs for them with their peers and in the AL space.

Not much-but a few ideas.

Cindy Beck, CHOICES Director  
Midland Area Agency on Aging  
2727 W. 2nd St. Suite 440  
Hastings, NE 68901  
Phone (402) 463-4565, Fax (402) 463-1069

## DHHS HCBS Public Comments

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**From:** Charles Smith <cs101tab@yahoo.com>  
**Sent:** Sunday, September 28, 2014 5:49 AM  
**To:** DHHS HCBS Public Comments  
**Subject:** (HCBS) programs

Hi:  
By saying homelike do mean in an actual home (residence) or are you also including people the are living in an assisted living facilities that are homelike. And what about people that receive some type of out patient treatments such as physical therapy at a nursing facility or other type of treatments. And does this have anything to do with the type of assistance received in a persons home.

Thanks,

Charles Smith

## DHHS HCBS Public Comments

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**From:** Charles Smith <cs101tab@yahoo.com>  
**Sent:** Tuesday, September 30, 2014 6:25 AM  
**To:** DHHS HCBS Public Comments  
**Subject:** Why didn't you respond

Did I do something wrong Why didn't you respond to my Email do I not have a right to receive answers, or is that just reserved to special personal even if you think my questions are stupid you should be polite and respond.

Hi:

By saying homelike do mean in an actual home (residence) or are you also including people the are living in an assisted living facilities that are homelike. And what about people that receive some type of out patient treatments such as physical therapy at a nursing facility or other type of treatments. And does this have anything to do with the type of assistance received in a persons home.

Thanks,

Charles Smith

Name: Gayle L Nichols

Date: 9-30-14

Do people who have been given Power of Attorney by their disabled family member, lose the ability given them in helping make ~~business~~ decisions?

Who has the final say, the State or those given POA by their family member who is disabled?

Is the State able to "limit" our POA or guardianship?  
Can we be over ~~ruled~~? or over ruled? In our decisions?

Name:

Pat Coltingham

Date:

9/30/14

Questions: What is the impact <sup>on</sup> of an individual who has a guardian?

Will the presence of a guardian <sup>and their wishes</sup> be a reasonable justification for modification of requirements documented in the "person-centered plan"?

Is there a danger that people with guardians who fear the community will ~~become~~ continue to find themselves confined in segregate settings?

My name is Kathy Hoell (K-A-T-H-Y H-O-E-L-L) and I'm here testifying as an individual. First of all, I would like to thank DHHS for all the work they put into the Home and Community Based Services process and the changes that has been involved to make this comment period accessible to individuals with disabilities, family members and service providers. However, I am concerned about the number of people that are not going to be able to testify. Transportation is such a big issue in Nebraska, especially accessible and affordable. Since DHHS has access to a videoconferencing system that reaches statewide it would have been possible to obtain public comment from all corners of the state at minimal expense.

After extensive review of CMS's final rule on HCBS, I really like the final rule and I hope the state of Nebraska will make a sincere effort to implement these rules as they have been presented. However I do have some concerns about the transition plan that you released:

- 1.) The repeated use of the term "community like." I am not sure what that means. "Community like" is not used in the Final Rule. It says that people with disabilities have to be included in the community like their non-disabled peers or they use the term community based.
- 2.) I found the transition plan to be rather confusing. No settings that are currently in existence are identified as HCBS. The time lines are not consistent throughout the document. There is a lack of a narrative to fully describe how this process would evolve.
- 3.) I believe some HCBS settings in Nebraska will not comply with the new definition as defined by CMS, for example the TBI Waiver which only funds Quality Living which is an institution and their Assisted Living Apartments are on their property, plus the Autism Waiver which remains unfunded but not addressed. CMS has indicated that states should provide autism services. So why is not included? The transition plan seems to gloss over places that don't meet the definition, The Final Rule talks about a heightened scrutiny process to evaluate these sights.
- 4.) I realize that the state has no responsibility to educate and make consumers aware of these changes but I think it would be to the advantage of DHHS in doing so.

I understand that DHHS has undertaken a number of programs that are all operating at the same time. I'm sure this is rather problematic however it is imperative that people with disabilities and seniors are able to live independently as possible with dignity and respect, just like anyone else. I would encourage you to remain involved with consumers and other advocacy organizations who share their concerns with you and to be active partners with them as everyone moves forward on this process.



Name: Evelyn Bierhaus

Date: 9-30-2014

? # of clients

? cost of transition and end result programs & services

? who funds the costs

Name: Kirstin Reed

Date: 9/30/14

I believe the timeframes are reasonable and the plan makes sense to improve the lives of people with disabilities. I believe my major concerns would be surrounding leases, management of personal funds, transportation and the process for evaluating rights restrictions. As a provider with provider operated settings we rely on community landlords for property. These will need to be modified. I am concerned about individuals receiving support being held responsible for damages to property that could be passed along to the individual by the provider. This needs to be approached with caution. Providers are often obligated to manage

Personal funds for individuals. When none else is available. While there is training that goes along with this, it is often difficult to fully return this to the individual. In fact, it is often required by Social Security. Providers need to be involved in revision of this process to assure we can meet the regulation.

With the increase in community involvement, the need to access more transportation service is going to be needed. Transportation is extremely costly to providers. There is a lack of public transportation that is available and affordable in many communities.

Lastly, while rights restrictions and process are already available I believe having a consistency among providers for the review of rights restrictions would be good to add.

**Testimony of Disability Rights Nebraska  
Public Hearing on Waiver Transition Plan  
September 30, 2014**

**Bradley A. Meurrens  
Public Policy Specialist**

Disability Rights Nebraska is the designated Protection and Advocacy organization for people with disabilities in Nebraska. We appreciate this opportunity to comment on the proposed transition plan for home and community-based waivers in Nebraska. We are still in the process of reviewing and analyzing the new federal regulations under which the waivers discussed today will function. Thus our comments today will be brief, with more detailed comments to follow by the October 15<sup>th</sup> deadline.

1. Narrative description

It is difficult to gather a clear conceptualization of how the state plans to proceed to accomplish transition. Reading the matrix, while helpful when deciding what tasks will be assigned to achieve a set of benchmarks, is not "user-friendly" when trying to understand what the goals are and how Nebraska plans to accomplish those goals. The overall goals of the federal regulations are known as are the minute details of tasks, schedule, and actors involved displayed in the matrix, but what is missing is a narrative description of how the details create the path to transition.

2. Education

Education the public, and especially those individuals receiving services, about the new federal regulations is critical to achieve the goals set forth by the regulations, to ensure accountability, and to receive high quality public and stakeholder input. Public and stakeholder input has been recognized as an integral part of making the new regulations effective and accountable. We would suggest that the transition plan include and clarify more opportunities to educate providers, service recipients and families if applicable/appropriate, advocacy groups/stakeholders and the public about the transition plan/components, the pertinent federal regulations regarding a particular waiver(s), and how far the state is along in meeting its milestones/goals of new waiver regulations. More educational activities along these lines should be included in the transition plan.

3. Clarity of Definitions and Accountability

It is unclear from reading the matrix how assessments of certain requirements (e.g., location adjacent to an institution, provider compliance) will be handled and

by whom. For example: Will the service providers be assessing their own services/facilities for compliance? If not, what entity will be, and who will comprise the panel of assessors? What will be the criteria? How will leases be handled if an individual loses or no longer needs services?

Additionally, we feel the transition plan would benefit from some definitional clarification. For example, what is the meaning of "privacy"? How is that measured and assessed, using what criteria? Lack of definition can lead to erroneous assessments and unaccountability.

The transition plan does not seem to provide much context to the workplan matrix.

The new federal regulations have created an opportunity to realize a cultural shift in the way home and community services are provided in Nebraska. The new federal regulations are a step in the right direction and we are willing to collaborate, in the capacity that we can, to help advance a better way for Nebraskans with disabilities.

**Angela Hildenbrandt**

**From:** jeremy wolzen [jwolzen1973@yahoo.com]  
**Sent:** Saturday, October 04, 2014 4:47 PM  
**To:** Angela Hildenbrandt  
**Subject:** Fw: Fwd: Delivery Status Notification (Failure)

Hi Angela. I hope that you&your family had an enjoyable weekend&was to see you 4 at Target on Sat. Could you please print this email then I've give me&my mothers comments to Kathy as our emails wouldn't go through. I'll get them from you&I will ride my bike for volunteering this week&thanks. Have a good day.

Hi guys. My name is Jeremy Wolzen. I am a resident at QLI in Omaha and have been for over 12 years and I want to say that to me&my parents&siblings think that this is a wonderful facility&I couldn't ask for a better fit for me as they employ good,quality people and with me being less disabled than several of the residents who are more disabled than I am so I am allowed to come&go as I please as long as I have my medication with me which is my responsibility. It is a well run&organized facility that I feel blessed to call home&I just wanted to add my comments&I have. Thank you for allowing me to do so.

 **Jeremy**

----- Forwarded Message -----

**From:** Mary Wolzen <mwolzen@spsne.org>  
**To:** Jeremy Wolzen <jwolzen1973@yahoo.com>  
**Sent:** Saturday, October 4, 2014 3:55 PM  
**Subject:** Fwd: Delivery Status Notification (Failure)

I tried to send this but couldn't. PLEASE see to it that they get my comments!  
 Thanks!

Mom

----- Forwarded message -----

**From:** Mail Delivery Subsystem <mailer-daemon@googlemail.com>  
**Date:** Sat, Oct 4, 2014 at 3:53 PM  
**Subject:** Delivery Status Notification (Failure)  
**To:** mwolzen@spsne.org

Delivery to the following recipient failed permanently:

DHHS.HCBSPublicCommnts@nebraska.gov

Technical details of permanent failure:

Google tried to deliver your message, but it was rejected by the server for the recipient domain nebraska.gov by mx04.ne.gov. [164.119.247.104].

The error that the other server returned was:  
550 #5.1.0 Address rejected.

----- Original message -----

X-Google-DKIM-Signature: v=1; a=rsa-sha256; c=relaxed/relaxed;

d=1e100.net; s=20130820;

h=x-gm-message-state:mime-version:date:message-id:subject:from:to  
:content-type;

bh=93tSeWNw9kkiwJxgujRxgbZRe+H91lb1e/K+AM2qAto=;

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YgdQ==

X-Gm-Message-State:

ALoCoQkVNu752dbTDDIajBvbp82YRVooNHOCOWiAEcM0JQI61pdblq2qzoFXNt5ISdtSH/hC4LOy  
MIME-Version: 1.0

X-Received: by 10.43.160.69 with SMTP id mb5mr6702342icc.43.1412456004335;  
Sat, 04 Oct 2014 13:53:24 -0700 (PDT)

Received: by 10.107.39.7 with HTTP; Sat, 4 Oct 2014 13:53:24 -0700 (PDT)

Date: Sat, 4 Oct 2014 15:53:24 -0500

Message-ID: <CANZneAb1\_fbuhdWzqJxfEUJfzWx4xg4jN-C4h8ODe5Oi2qPPsg@mail.gmail.com>

Subject: Comment

From: Mary Wolzen <mwolzen@spsne.org>

To: DHHS.HCBSPublicComments@nebraska.gov

Content-Type: multipart/alternative; boundary=001a11c2d62c66804505049f0af7

Our son, Jeremy Wolzen, has lived at QLI for 12+ years and we continue to be impressed with his care. The administration and staff always put the residents and their needs first. They continue to strive for improvements/updates in all areas of QLI's facilities. The environment is "home like" and well maintained. It's the complete package to meet all of Jeremy's needs. QLI is indeed the quality of living that fits Jeremy perfectly...there's no better facility!!!! You are much more appreciated than these few words convey  
Thank you for an outstanding facility!!!

Mary Wolzen

Comment #013



## DHHS HCBS Public Comments

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**From:** Stacy Beeck <stacybeeck@yahoo.com>  
**Sent:** Tuesday, September 30, 2014 11:21 AM  
**To:** DHHS HCBS Public Comments  
**Subject:** CLDS

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hello,

I received a post card notice about public meetings being held regarding compliance regulations for community based services that began 3/17/14.

I want to share that I do enjoy this option to use my funding for CLDS services. This allows me more independence and choices in my daily life. While it is difficult in some cases to 'find' and hire people willing to work these services, I have been fortunate so far. I worry, though, about replacing them if that becomes necessary. This is a huge issue for those of us who do not have access to a place to find others to fill these hours. Has this concern been addressed or is there an avenue I am not aware of?

Secondly, these regulations are particularly restrictive when I need my non-specialized attendant to be with me on over night excursions or vacations. This makes it hard for me to ask them to take or go with me when they are not compensated for attending to my physical needs. Sometimes I need toileting, a medication, a drink, or to be covered/uncovered while sleeping. There is always the possibility of an emergency situation to have to leave the room. All these issues are important and a concern for those of us not able to totally care for ourselves.

Also, sometimes I am ill and need someone to spend the night with me to attend to those needs. There could be other reasons that I would need an attendant with me at night that no one can even imagine until that 'issue' would arise.

So, in conclusion, what I am saying is that I feel I am being restricted from using my 'hours' for my community like needs. I try to live as normal a life as possible and by not being able to utilize my attendants to do those things that 'non-physically disabled' people can do without as much dependence on others--seems to be a contradiction of why this option exists.

As much as my attendants want to give of their time to assist my overnight needs, they must be compensated for the time they spend with me. It's called a JOB and they should be paid.

Sincerely,  
Stacy Beeck



## DHHS HCBS Public Comments

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**From:** Intermill, Mark <MIntermill@aarp.org>  
**Sent:** Thursday, October 02, 2014 10:04 AM  
**To:** DHHS HCBS Public Comments  
**Cc:** Flury, Pattie  
**Subject:** Comments on HCBS Waiver Settings Transition Plan

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

I appreciate the opportunity to comment on the Transition Plan to Implement Settings Requirements for Home and Community-Based Services Adopted by CMS on March 17, 2014 for Nebraska's Home and Community-Based Services Waiver. The implementation of the new rules could have significant impact on people who need and use home and community-based services that are funded through DHHS programs. I appreciate the challenge facing the Department, the serious effort that you have made to develop a comprehensive plan and offer the following recommendations. If I can provide any clarification of these comments, please contact me.

Mark Intermill  
Advocacy Director, AARP Nebraska  
301 S. 13th, Suite 201  
Lincoln, NE 68508  
402-323-5424

### Aged and Disabled and Traumatic Brain Injury – Page 13 of 70

1.      *Outreach*      *General Requirements*      *Identify and implement effective strategies...*

AARP wholeheartedly supports the expected outcome. To achieve that outcome I suggest that DHHS staff schedule regular meetings with a coalition of stakeholder organizations that has formed to discuss the implementation of the new CMS regulations that are the subject of this transition plan. Regular meetings with the coalition would be an efficient means of sharing information about the status of the transition plan and obtaining suggestions and recommendations on how the transition can best be implemented.

2.      *Outreach*      *General Requirements*      *Educate providers...*

The expected outcome is as follows. "Inform providers and public." I recommend that the outcome statement be expanded to indicate the content of the information provided and its purpose. It wasn't clear to me.

3.      *Outreach*      *General Requirements*      *Waiver participants understand...*

This is a laudable action item and expected outcome. As was the case in Recommendation 1, I would suggest that the coalition would be an effective resource in achieving the outcome. I recommend that the Department schedule regular meetings with the coalition to facilitate participant education.

4.      Each of the previous action items (1-3) have a targeted implementation date of "ongoing" which adds a degree of ambiguity to the action item. I recommend including a means of measuring the degree to which the action item has been accomplished and including a targeted completion date.

I also recommend that the plan be amended to incorporate outreach action steps throughout the document rather than in a separate section so that it is clear that DHHS will consult stakeholders throughout

the process. I did see some references to stakeholder involvement, but I believe that it would be useful to the Department to have direct stakeholder involvement in every step of the development and implementation of this plan.

**Aged and Disabled and Traumatic Brain Injury – Page 9-10 of 70**

5.	Identification	Community Integration Residential	Identify residential services settings...
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I wasn't sure if this action item was intended to produce a list of specific residential facilities that are not community-based or if it was intended to produce a set of criteria that would be used to make that determination. I did note the Transition Plan Addendum including the section "Qualities of an HCBS Setting". It is stated that the AD waiver will assess the degree to which providers comply with the requirements. Presumably, there will be criteria developed to complete that assessment. So if that wasn't the intent of this action step, I recommend adding such an action step right before this one.

This is potentially the most controversial part of the transition plan. While I support the concept of assuring the HCBS Waiver services are provided in a community setting, I wonder how the qualities will be applied to a residential facility that specializes in care of persons with dementia. If the effect of the rules is to force an assisted living facility resident with dementia who is covered by an HCBS Waiver to move to a nursing facility where he would be covered by Medicaid State Plan, the new rules would be counterproductive.

I did note that under the heading of Nebraska Health and Human Services Resources is “Listing of all residential settings that meet at least one of the ‘not likely’ community criteria”. I interpret this to mean that a list of facilities that may not be eligible for HCBS Waiver reimbursement has been developed. If that assumption is correct, I recommend that the list be made available to the public so that there is clearer understanding of the impact of the proposed rules.

**Aged and Disabled and Traumatic Brain Injury – Page 12-13 of 70**

6.	<i>Identification</i>	<i>Community Integration</i>	All
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I recommend taking a closer look at the Start and Completion Dates. Many of the action steps had a six-month range for completion. As I look at the action steps there seems to be a logical sequence for performance. Setting sequential completion dates would aid in managing the process and in providing a clearer understanding to the public about how the transition process will work.

7. Analysis	Community Integration	Distinguish “likely not” community...
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While the matrix provides a comprehensive overview of the action items, I did have difficulty distinguishing things that are considered *Identification* from those that are considered *Analysis*. It is my understanding that this action steps related to *Analysis* represent the application of the criteria developed in the *Identification* section. And I assume that the next action step following *Analysis* would require the development of a process through which a provider that does not meet the criteria can achieve compliance. But these assumptions are called into question when I look at the start and completion dates and see that the *Analysis* precedes the *Identification*, which would mean that, if my assumptions were correct, the criteria would be applied before they are developed. It would be helpful to clarify the intent of the actions steps as they relate to the process of developing a list of residential facilities that are not in compliance with the new rules.

### General Comment

## 8. Performance Metrics

There are action steps related to development of performance measures throughout the plan. It is essential to be able to measure progress. But the development of some measures seems to be sequenced late in the process. I recommend that the performance metrics be developed as early in the planning process

as possible and be revisited often. What we measure is often what we get. Attention to the development of the right performance measures is essential.

10/8/14

DHHS:

In response to your letter asking for comments from individuals who receive waiver services.

I'm a Single Female of 70 yrs. I receive several of your services. These services are a tremendous help in enabling me to remain in my own home and maintain a level of independence.

I'm on oxygen 24/7. Due to A-Fib heart condition and COPD. - I am missing a left hand (birth defect) and I spent nearly 3 months in the hosp. with a case of 'C-Diff' which greatly weakened my immune system; also my physical capabilities. I take a variety of daily medications.

Chore service helps me to maintain a clean & healthy living environment. Also kind to any needed assistance with bathing or cooking.

"Thailand Aging" has been a God send - helping out with home repairs and various changes to help me with devices for bathroom safety - and safer home entrance etc... → →



The staff I have contact with are  
Awesome. - Kind, Patient, Helpful, Caring.  
They show genuine care & concern for  
my health & safety. I appreciate all they  
do to help me retain as much dignity and  
independence as is possible in my condition.

I have nothing but positive comments  
concerning "HCB's services"

Sincerely,  
Judy Robinson  
1603 Sylvan St.  
Grand Island, NE  
68801

308-383-9771



**DAVE HEINEMAN**  
GOVERNOR

## STATE OF NEBRASKA

### NEBRASKA PLANNING COUNCIL ON DEVELOPMENTAL DISABILITIES

301 CENTENNIAL MALL SOUTH  
P.O. Box 95026  
LINCOLN, NE 68509-5026  
PHONE (402) 471-2330  
FAX (402) 471-0383  
TDD (402) 471-9570

October 9, 2014

Christina Mayer  
Department of Health and Human Services  
301 Centennial Mall South  
PO Box 95026  
Lincoln, NE 68509

Dear Ms. Mayer:

I would like to submit the following comments on behalf of the Nebraska Planning Council on Developmental Disabilities on the "Transition Plan to Implement the Settings Requirement for Home and Community-Based Services Adopted by CMS on March 17, 2014 for Nebraska's Home and Community-Based Waivers." We appreciate the opportunity to comment on the plan and acknowledge the work that went into its development. The following are offered for your consideration:

- The plan may be improved and made more user friendly for self-advocates, families, and others by expanding the section titled Nebraska's Transition Plan to include more detail about the outreach, identification, analysis, and remediation activities and the overall process. The impact and final outcomes of these could be described for those who find the matrix format overwhelming or too difficult to follow. It does not need to be lengthy, but the document would benefit from a more detailed explanation of what is planned during the transition.
- We commend the Division of Medicaid and Long Term Care for including a stakeholder advisory council, and the Quality Council in the identification and analysis tasks proposed. The inclusion of individuals from outside the Department in these tasks insures meaningful input early in the process.
- In contrast, we could not see that the Developmental Disabilities Division had involved any external group in the identification and analysis tasks other than as resources in gathering the survey data. We encourage them to consider adding groups like their own Developmental Disabilities Advisory Committee or the Nebraska Planning Council on Developmental Disabilities as partners in both the identification and analysis tasks. These groups could assist them not only with the tasks of identifying rules and regulation, settings, etc., but also with the analysis of what may need to be revised to meet the new regulations.

Nebraska Planning Council on Developmental Disabilities  
402-471-2330

PO Box 95026  
[www.dhhs.ne.gov/ddplanning](http://www.dhhs.ne.gov/ddplanning)

Lincoln, NE 68509-5026

Comment #017

- The Nebraska Planning Council on Developmental Disabilities is pleased to see that we are included in the matrix as a resource under both outreach and remediation for the Developmental Disabilities waivers. The Council supports efforts for needed systems change. However, the Council does believe that their activities would have greater impact if they were coordinated with the Developmental Disabilities Division during the entire process, including all four tasks.

Again, we thank you for the opportunity you have given us to comment. We are looking forward to working with both Divisions as they implement this Transition Plan to encourage true integration for individuals on Home and Community-Based Services waivers in Nebraska.

Sincerely,

A handwritten signature in dark ink that reads "Kristin Mayleben-Flott /mg". The signature is written in a cursive, flowing style.

Kristin Mayleben-Flott  
Chairperson  
Nebraska Planning Council on Developmental Disabilities

## DHHS HCBS Public Comments

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**From:** Margi Ehrke <margi.ehrke@almacardinals.org>  
**Sent:** Tuesday, October 14, 2014 4:00 PM  
**To:** DHHS HCBS Public Comments  
**Subject:** Home and Community Based Services

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Thank you for giving us an opportunity for comments on the DHHS's proposed plans regarding home and community based services.**

Home and Community based services were designed to respect and appreciate each person's individual abilities in the context of their specific aspirations and unique circumstances. It's role is to support people in the appropriate atmosphere where self-expression, self-understanding and personal growth can flourish.

Each individual is to be encouraged to participate in the design of a personal plan that would help them achieve their goals. Objectives are to be determined by the individual and his/her support team, and are to be reviewed and updated periodically.

Our tax dollars are dedicated to providing services to accommodate each individual to the fullest extent possible. For our son, this perfect environment has been found with a portion of his hours each day being spent in his care provider's home.

Adam is a 24 year old young man with Down Syndrome. He resides with his us, his biological parents. He is the third child of five, with one younger sibling still living in the home. The long term placement for Adam is that he will reside with us until that is no longer possible. At that time, he will live with one of his siblings. Arrangements have been made for his care. Adam's speech is limited to one to two word utterances, which make him difficult for the general public to understand. He has limited fine motor skills in his fingers. He has received many years of occupational therapy and still has difficulty with pinching, handwriting, and grasping. Adam is not toilet trained. He continues to wear men's diapers and requires changing for urination and bowel movements.

Adam has had a full-time job coach at the Super 8 Motel in Alma, NE, where he vacuumed and took out the trash. This job site did not remain permanent because he required very close supervision, he had difficulties staying on task and completing his jobs. He is not able to complete more than 10-15 minutes continuous vacuuming. He required hand over hand assistance to complete tasks. He has also had a full-time job coach assisting him at the Agri Coop Hardware. At this business, he faced the shelves. This also required hand over hand assistance and was not sustainable employment.

Adam is active in his local community through his parents' involvement. He attends church. At church, he participates as an usher where he helps collect offering. Adam has tapped the drums or tambourine during the



church service. He will sing or play the drum with his family when they travel to different churches to perform at church services and other musical events. Adam goes bowling weekly with a group of other developmentally disabled peers of all ages.

Adam has been receiving services from Julie Ott for two years. A portion of these services have been provided in the Ott home. Adam is able to receive one-on-one care and attention. Julie is a trained teacher. Adam is able to learn the trade of gardening on the Ott's vegetable farm. This trade has the biggest long term employment potential for Adam. Most importantly, for the first time in Adam's life, he has a normally developed peer as a friend and role model. The Ott's youngest child, who is 17 years old, interacts with Adam. He is teaching Adam how to interact appropriately. Adam's language has grown because he has a normally developed peer that talks to him. Adam uses one to two word utterances. It is important to increase the words that Adam uses in his vocabulary. The Ott's youngest child has been a role model for Adam when Adam is in public. Adam wants to model his behavior after his friend.

Following are HIS and OUR (his parents and legal guardians) goals for him, and how these goals are being met in the Ott's home and in the community:

## **Goal:**

### **Physical Activity to Maintain Health**

#### **Agenda:**

Twice a week Adam will go to the YMCA of Holdrege to swim, lift weights, play basketball and walk.

Daily he will participate in yard work (sweeping, raking, picking up sticks, shoveling snow, blowing leaves)

He will swim, under adult supervision, during warm weather at the Ott home.

Adam will participate in sports with the Ott's children, under adult supervision.

## **Goal:**

## **Work Skills to Prepare Adam for future Employment Possibilities**

### **Agenda:**

Adam will learn to increase his time on-task by doing the following activities and increasing his daily time: sweeping inside and out and vacuuming.

Our goal is that Adam will learn gardening so that he can have his own garden and sell his produce at the weekly Farmer's Market in his home town. The Ott's teach him how to plant the seeds, water the plants, weeding and harvesting the produce. They have a variety of produce in their garden. This will allow him to learn and get hands on experience.

Adam already has strengths in technology skills. He enjoys taking videos and pictures with cameras and phones. The Otts are working with him on building his videography capabilities. We hope that this will allow him to assist the local school district in videoing sports activities.

Adam has assisted with baseball, basketball and football games since he was seven years old. He has been an assistant student manager for all these athletic events. He continues this role in his local school. His responsibilities include getting out the equipment and sitting on the sideline with the team.

Adam has volunteered at the local theater by picking up trash and vacuuming following the movie. The local theater board will be contacted to inquire if this can be a scheduled volunteer opportunity. All positions at the local theater are voluntary.

### **Goal:**

#### **Improving Daily Living Skills**

### **Agenda:**

Adam will work on toilet training; both urination and bowel movements. He will also work on personal hygiene – (instructions from Julie and opportunities to practice) Activities will include: bathing himself, grooming, and brushing his teeth.

Adam will prepare light meals with close supervision and assistance. He will engage in shopping trips for groceries or personal items where he will learn making wise choices, money management, and learning how to pay. Adam will practice bringing the items home and learning how/where to put them away. He will practice setting the table, clearing the table, and stacking the dishwasher.

Adam will practice time management skills by writing on his calendar upcoming events and preparing for them. Ott's have Adam keep a weekly calendar. Adam practices his handwriting everyday by copying simple sentences in his own handwriting book by the Ott's. This daily practice keeps his handwriting legible and works on his fine motor skills.

## **Goal:**

### **Recreational Skills to Prepare Adam for Appropriate Socializing and Emotional Health**

#### **Agenda:**

Adam will attend the YMCA twice a week.

Adam will attend church every Sunday where he participates as an usher, collects offering, and participates in musical performances.

Adam will assist the local high school sports teams by serving as the student manager. He will assist with equipment and clean up.

Adam will bowl every week with other developmental disabled peers.

He will assist the local theater with clean up after the movie on a scheduled basis.

**The Ott home** has been the perfect learning environment for Adam during these last two years of his life. He is respected, encouraged, taught well, and kept very active and learning. He is taken into the community often to acquire the aforementioned skills. He has a best friend in their son, Jacob, who is a wonderful and kind peer model for him. He is truly loved.

These programs were created to find the best possible environment for each individual in the program. This home is that place for Adam: warm and inviting, clean, always brimming with loads of activities, ideas, learning and love.... inside and out. This home is special, in that it is both nurturing and challenging for him.

We have been told that this arrangement will no longer be allowed by this program, but that his caregiver COULD come to our home daily to care for him. Enrichment in anyone's life does not involve staying within the confines of your own home, but involves getting out and learning to cope in a different environment. Being able to relate to other adults outside the safety of your home environment is important, as we all know. This home not only gives Adam a work environment, but a school environment as well. It is both stimulating and challenging. It is important to us that Adam has this opportunity to get up, get ready, and go into this positive and engaging atmosphere everyday.

At this stage in his life, Adam has not yet reached the place where he could work independently in a workplace without considerable oversight by a close assistant. This would NOT be where he would thrive or be comfortable for an extended period of time. This is NOT sustainable with his level of ability, nor is it what HE wants. Therefore, we see this situation as the ideal one for Adam as he continues to learn these skills.

Here, Adam is receiving the best assistance and training to help him reach his goals for life.

The DHHS's local service coordinator who oversees Adam, has thoroughly looked into this daily arrangement, which has been working perfectly for Adam for the past two years. She agrees 100 % that this situation is the ideal location for Adam to thrive. She knows every detail about the pro-

provider, location and services being given. We believe that she is the "eyes and ears" of the DHHS department, and her opinion should be respected, and highly valued for that which she has been trained.

We are asking that this and other situations like Adam's be given an exception to the "One Size Fits All" thinking of this fine program. It has been working perfectly in accomplishing the goals this program was created to be.

Adam could be sent to a workshop everyday, sanding woodworking crafts. He could then live his evening hours and weekends in a care provider's home, through Mosaic's program, called "Host Home Settings". These care providers would receive pay for these hours that Adam would be spending in their home. There are many providers

currently in this situation receiving pay for care given in their own home. These are tax payers' dollars, and we ask, "Why would this be deemed acceptable and the fine care given in our situation not?" We also believe that anyone sent to a workshop (that is also being funded by tax payers' dollars) is not receiving, even closely, the care, attention, and quality training that Adam is receiving from his current care provider.

We ask that you carefully and fully consider our comments, and allow this situation to be included in your Home and Community based services program. We look forward to hearing back from you soon.

**Sincerely,**

**Don & Margaret Ehrke**

**P.O. Box 985**

**Alma, NE 68920**

**Home - 308-928-2322 / Don - 308-991-0261 / Margaret-308-991-2225**

October 15, 2014

Nebraska Department of Health and Human Services Legal Services  
301 Centennial Mall South  
P.O. Box 95026  
Lincoln, Nebraska 68509-5026

**Subject:** NHCA Comments on Nebraska's HCBS Transition Plan

Thank you for the opportunity to comment on the draft Medicaid Home and Community-Based Services (HCBS) Transition plan developed by the Nebraska Department of Health and Human Services (DHHS). The Nebraska Health Care Association (NHCA) understands this transition plan describes the process by which Nebraska will ensure services included in its HCBS waivers meet the community-like expectations set forth by the Center for Medicare and Medicaid Services (CMS).

NHCA is a not-for-profit trade association representing more than 500 skilled nursing facilities, assisted living facilities, and hospice agencies that provide a continuum of long-term care services to more than 20,000 Nebraskans each day.

It appears Nebraska was visionary in its development of assisted living. Over the years, stakeholder commitment to a social model of service delivery means Nebraska's assisted living facilities continue to be structured around consumer choice and autonomy. The rights of assisted living residents are set forth in regulation and include their right to *"self-direct activities, participate in decisions which incorporate independence, individuality, privacy and dignity and make decisions about care and treatment."* [175 NAC 4-006.04]

NHCA respectfully offers the attached suggested changes to the Aged and Disabled Medicaid Waiver regulations [480 NAC5] and the following recommendations:

**1) NHCA recommends DHHS not preemptively conclude the following types of facilities and services are "not HCBS," based solely on their physical location**

NHCA does not believe the facilities and services in this category can automatically be assumed to isolate individuals from the broader community. In fact, they serve a critical function in meeting the needs of Nebraska's consumers.

NHCA respectfully suggests that it would not be appropriate to determine an entire category of settings is not in compliance with the new HCBS rule without individual analysis. The federal regulations repeatedly emphasize a true HCBS setting is one that offers consumers opportunities for community engagement and choice, helps ensure they are treated with dignity and respect, and protects their privacy and autonomy. NHCA concurs with CMS that these aspects are of far more importance to consumers than the physical location of the place they have chosen as their home.

**a. *Facilities and services immediately adjacent to or on the grounds of a public inpatient facility***

DHHS supported the development of these home and community-based facilities and services in rural communities a number of years ago by offering financial incentives for the establishment of alternatives to nursing facility care. As a result, Nebraska has several small city or county-owned assisted living facilities that were created in response to consumer demand and effectively increased the supply of community-based services for rural consumers. Often these settings are located within a residential neighborhood or adjacent to a school or church, which helps facilitate the active integration of residents into community activities. If these services were eliminated, it would force older Nebraskans to travel or move many miles from their hometowns in order to receive the services they need.

**b. *Specialized facilities and services located on grounds of a privately-operated inpatient facility***

DHHS supported the development of inpatient and home and community-based facilities and services to meet a specific consumer need for specialized traumatic brain injury (TBI) services. The co-location of the continuum of TBI services allows consumers easy access to the professional staff and the specialized services they need and helps them gain the skills necessary to transition to the broader community. The co-location also means consumers can easily and quickly move between levels of care as their needs change or in the event of an emergency.

**c. *Secure facilities and services***

As the incidence of Alzheimer's disease and other dementia continues to increase, there is an increasing need for a continuum of long-term care services to meet varying consumer needs. There are times when a consumer with a mild cognitive impairment can be safely served in an unsecure assisted living facility, with a minimal amount of assistance. More often the individual requires a secure living area to ensure their safety, so they do not endanger their health or well-being during those times when they experience confusion. Without the ability to provide a secure perimeter to a memory care unit, facilities would not be able to safely admit or retain residents at risk for wandering or who are physically healthy and mobile, but lack the cognitive ability to know when they are in danger.

**d. *Multiple facilities co-located and operationally related***

For the same reasons outlined above, these facilities should not automatically be assumed to not be HCBS based solely on their co-location. Often these co-located facilities offer more opportunities for consumers to engage with the broader communities because of their access to additional transportation, staff and financial resources. In Nebraska, these co-located facilities can also include independent housing, which again enhances the opportunities for interaction with the broader community. These co-located facilities also offer an option for spouses to remain in close proximity, should they need different levels of care.

**2) NHCA recommends DHHS offer stakeholders opportunities for collaborative involvement throughout the transition process and assist providers to comply with the new rules**

NHCA recommends DHHS create a small, streamlined and focused workgroup, which could be quickly assembled and composed of assisted living representatives, Medicaid Waiver policy staff, and resource developers to work on very specific tasks, such as development of (1) an assisted living facility self-survey, (2) HCBS requirement assessment tool, (3) educational resources, and (4) technical assistance and informal appeal processes to help facilities comply with the new rules. A self-survey could serve as an educational tool for providers. Providing robust technical assistance would help facilities identify possible changes they could implement prior to the assessment process. It would also be helpful to establish an informal appeal process for providers who disagree with a "non-HCBS" determination to submit additional information demonstrating their compliance. Additionally, a workable timeline is crucial to allow providers time to make changes, if necessary, and allow consumers to remain in their home.

**3) NHCA recommends DHHS establish a process to allow Medicaid Waiver participants who choose to continue to reside in an assisted living facility that is determined to no longer meet HCBS criteria to be grandfathered in their current setting during the five-year transition period**

NHCA recommends DHHS consider this option as a way to allow consumers to remain in their current assisted living facility if their individual conditions indicate moving from the current setting would reasonably pose a risk to their physical or psychological well-being. This would be a way to prevent or lessen the negative impact a sudden involuntary move can have on vulnerable consumers, most often referred to as "transfer trauma" or "relocation stress."

**Addendum**

The attached Addendum includes NHCA's suggested changes to the Aged and Disabled Medicaid Waiver regulations, which would incorporate the consumer's individualized Plan of Services and Supports into the consumer's Resident Service Agreement, as an Addendum, and ensure copies are provided to each involved party. The suggested changes would also incorporate the new HCBS requirements into Nebraska's Aged and Disabled Medicaid Waiver regulations and reference the rights of assisted living residents already protected under Nebraska's licensure regulations, which are very similar to those identified in the new federal regulations. [42 CFR 441.301(c)(4)]



## ADDENDUM: NHCA'S SUGGESTED REGULATORY CHANGES

### 480 NAC 5-005 WAIVER SERVICES

#### B. ASSISTED LIVING SERVICE

##### 1. Description

Assisted living is an array of support services that promote client self-direction and participation in decisions which incorporate respect, independence, individuality, privacy, and dignity in a home environment. These services include assistance with or provision of personal care activities, activities of daily living, instrumental activities of daily living, and health maintenance.

The need for this service must be reflected in one or more assessment areas of the client's plan of services and support.

##### 2. Definitions

Resident Service Agreement: An individualized contractual agreement between the facility and client. Clients who receive waiver assisted living service shall also have an individualized Plan of Services and Supports, which shall serve as an addendum to the Resident Service Agreement.

##### 3. Assisted Living Service Conditions of Provision

The need for assisted living service is jointly determined by the client and services coordinator.

Service Components: Providers shall offer and make available each of the service components required to meet the needs identified during each client's assessment, and included in the individualized Plan of Services and Supports. The need for the following services is determined on an individual basis as specified in the plan of services and supports to promote or maintain the client's level of independence. These include -

- a. Adult day care/socialization activities: Structured social, habilitative and health activities geared for the needs of the clients.

Clients shall be provided with opportunities to interact with individuals who do not reside in the facility, engage in activities and receive services in the greater community outside the facility, and seek employment and work in competitive integrated settings, if they choose.

- b. Escort services: Accompanying or personally assisting a client who is unable to travel or wait alone. This may include assistance to and from a vehicle and/or place of local destination. This may also include providing, or making arrangements for supervision and support to the client while away from the assisted living facility, as determined on an individual basis, and specified in the client's Plan of Services and Supports. Resident Service Agreement.
- c. Essential shopping: Obtaining clothing and personal care items for the client when the client is unable to do so for him/herself. This does not include financing the purchases of clothing and personal care items.
- d. Health Maintenance Activities: Non-complex interventions which can safely be performed according to exact directions, which do not require alterations of standard procedure, and for

which the results and client's responses are predictable (e.g., recording height and weight, monitoring blood pressure, monitoring blood sugar, and providing insulin injections as long as the client is stable and predictable). The need for health maintenance activities is determined on an individual basis.

- e. Housekeeping Activities: Cleaning of public areas as well as a client's private residence, such as dusting, vacuuming, cleaning floors, cleaning of bathroom and making and changing of the bed. Bed linens will be changed as soiled but at least weekly. Clean bath linens shall be made available daily.
- f. Laundry services: Washing, drying, folding and returning client's clothing to his/her room. Dry cleaning is the responsibility of the client but the facility will assist the client in arranging for this service if needed.
- g. Meal Service: Three meals per day, seven days per week, as well as access to between meal snacks. Each meal must consist of a variety of properly prepared foods containing at least one-third of the Minimum Daily Nutritional Requirements for adults, and take into account cultural and personal preference for foods served at specific times of day. Meals will be delivered to the client's room for those experiencing temporary illness.
- h. Medication Assistance: Assistance with the administration of prescriptions and non-prescription medications.
- i. Personal Care Services: Assistance with ADL's (e.g., transferring, dressing, eating, bathing, toileting, and bladder and bowel continence). The facility shall also provide assistance with eating. Assistance with eating includes opening packages, cutting food, adding condiments, and other activities which the client is unable to perform for his/herself in preparing to eat the food. If the client is unable to eat independently, the facility shall feed the client or shall assure other arrangements are made for this care. Personal care will be provided to the client in a manner in which the individual maintains as much independence and privacy as possible. The amount and degree of personal care services is determined on an individual basis.
- j. Transportation Services: Transporting, or making arrangements for transporting a client to and from local community resources identified during client assessment and included in the Plan of Services and Supports as directly contributing to the ability of the individual to remain in an assisted living facility.

Resident Service Agreement: The provider shall ensure that each client's individualized Plan of Services and Supports is incorporated into the Resident Service Agreement as an addendum there is a written plan for each client. The written Each client's individualized Plan of Services and Supports must be jointly developed with the client, services coordinator, and facility staff, and must include the client's strengths, needs, and desired outcomes, and the service components to be provided. The plan must also include an up-to-date listing of the client's current medications and treatments, any special dietary requirements, and a description of any limitations to participate in activities. Assisted living staff shall, together with the client and services coordinator, review and revise the resident service agreement as appropriate, but at least annually. A copy Copies of the plan must be submitted provided to the client, the client's services coordinator and the assisted living facility.

When a facility or the services coordinator determines that a client's needs are beyond the facility's capabilities or capacities to meet the client's needs, the services coordinator and the client will initiate alternative arrangements to ensure the client continues to receive any necessary services, including assisted living services, identified on the client's individualized Plan of Services and Supports.

If the client's services, including assisted living services, are denied, terminated or reduced, the client/guardian has the right to appeal the decision/action as provided in 480 NAC 5-003.D.

#### 4. Additional Conditions

- a. Clients shall be provided with choices in their schedule (e.g. bath, sleep, activities), including the choice of whether to participate in activities, unless this condition is modified for a specific resident, in accordance with the criteria identified at 480 NAC 5-005(B)(4)(g).
- b. Clients shall have choices in their visitors and provided with reasonable visitation times, unless this condition is modified for a specific resident, in accordance with the criteria identified at 480 NAC 5-005(B)(4)(g).
- c. Clients shall be provided with choices in what and when they eat, including choice of food at meal times, access to snacks between meals, the choice to eat alone or with others and have an option for cooking, unless this condition is modified for a specific resident, in accordance with the criteria identified at 480 NAC 5-005(B)(4)(g).
- d. Clients requesting a double-occupancy unit shall have a choice of roommates, unless this condition is modified for a specific resident, in accordance with the criteria identified at 480 NAC 5-005(B)(4)(g).
- e. Clients shall have the freedom to furnish and decorate their living/sleeping units, within the parameters specified in the Resident Service Agreement (RSA), unless this condition is modified for a specific resident in accordance with the criteria identified at 480 NAC 5-005(B)(4)(g).
- f. Clients shall be provide with lockable doors to their living/sleeping units with only appropriate staff having keys, unless this condition is modified for a specific resident, in accordance with the criteria identified at 480 NAC 5-005(B)(4)(g).
- g. Any modification of the additional conditions identified in 480 NAC 5-005(B)(4)(a-f) must be supported by a specific assessed need, justified in the client's individualized Plan of Services and Supports, and supported by appropriate documentation.

#### 5. Assisted Living Standards

HHS annually contracts with waiver providers of assisted living to ensure that all applicable federal, state, and local laws and regulations are met.

Facility Standards:

- a. Each assisted living facility shall be licensed as an assisted living facility and certified as an Assisted Living Service waiver provider, as defined in 480 NAC, Chapter 5, by the HHS System.
- b. Licensed nursing facilities in the State of Nebraska may apply to the Department for funding to convert all or a portion of their operation to assisted living under provisions of the Nebraska Health Care Trust Fund Act. Nursing facilities obtaining an assisted living license after utilizing funds granted under provisions of the Nebraska Health Care Trust Fund Act will not be required to meet the provisions of an independent living unit, independent bedroom, and independent

toilet facilities for a period not to exceed six months from the effective date of the assisted living license.

- c. The facility shall provide a private room with bath consisting of a toilet and sink for each client receiving waiver assisted living service. Any facility that receives funding through the Nebraska Health Care Trust Fund Act shall provide a private room with bath consisting of a toilet, sink, and tub or shower for each client receiving waiver assisted living service. ~~Semi-private rooms shall be considered on an individual basis (e.g., couples), and require prior approval of the HHS System.~~
- d. Assisted living service provided in facilities also providing nursing facility care shall be separately licensed and separately located in another wing or section of the building, with separate dining and common areas. Individual facility exceptions to separate dining areas may be considered based on the facility's assisted living philosophy, and requires prior approval of the HHS central office.
- e. In accordance with Nebraska Assisted Living licensure requirements [175 NAC 4-006.04], the assisted living facility shall provide residents with opportunities to exercise their rights.

For general provider standards, see 480 NAC 5-006

#### 5-6. Assisted Living Rates

The frequency of service is a month. Medicaid payment for assisted living service is through rates established by HHS Central Office. Variable rates may be utilized and may change annually.

#### 6-7. Assisted Living Record Keeping

The provider shall maintain the following in each client's file:

- a. The current Resident Service Agreement;
- b. The current Plan of Services and Supports as an addendum to the Resident Service Agreement; and
- c. Phone numbers of persons to contact in case of an emergency and the client's physician's name and phone number.

Stromsburg, Ne.  
Oct. 13, 2014

Dept. of Health and Human Services  
P.O. Box 95026  
Lincoln, Ne. 68509-5026

Dear Christina Mayer:

I received notice by my Social Worker, Annie Theis, that I am to express my views on the Waiver Services. I have been a resident of the Assisted Living at Midwest Covenant Home in Stromsburg for four plus years now. I am very appreciative of their services. If it wasn't for that I could not afford to be here and receive the wonderful care I am getting. I am happy and contented. Thank you!

Respectfully Yours,  
Bertha Younglund (age 87)

## DHHS HCBS Public Comments

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**From:** Kathy Hoell <kathy@nesilc.org>  
**Sent:** Wednesday, October 15, 2014 1:04 PM  
**To:** DHHS HCBS Public Comments  
**Subject:** public comment on HCBS

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

10-15-2014

### Memo

Subject: RE. HCBS Changes Response from Members of People First

This past weekend October 10<sup>th</sup>-12<sup>th</sup> of 2014, People First of Nebraska had their annual conference in Kearney. One of the breakout sessions for the conference focused on the impending changes to Home and Community Based Services that will impact all waivers the state of Nebraska has under Medicaid. This breakout session included examining how existing services are delivered. Pasted below is a chart developed to reflect the comments from the people in attendance.

Group Home	12	
Extended Family Home	10	
Assisted Living	6	
Own Home	9	
Live with Parents/Family Member	0	
Team Support	No: 1	Yes: 3
Your Choice of Roommate	No: 2	Yes: 0
Able to Decorate Room	No: 1	Yes: 20
Visitors Anytime	No: 9	Yes: 3
Key to Your Room	No: 0	Yes: 28
Key to Your House	No: 0	Yes: 0
Food of Your Choice	No: 0	Yes: 13
Access to Food	No: 18	Yes: 13
Do you live in an inclusive community for people with disabilities?	No: 2	Yes: 8*
Do you have a housing lease and or other legal documents?	No: 9	Yes: 10*

\*=comments

Had a lease only for the first year living in the apartment, then became a month to month tenant.

Also one person stated that there is a lack of transportation and that hinders a lot of his lifestyle choices.

Comment #021

Support staff are verbally abusive and sometimes it is perceived that the abuse is directed towards the person.

Individual rents a room from another individual who does own the home. The renter is required by the owner to provide 24 hour notice prior to having any visitors.

I am just forwarding these.

Based on the conversations and comments from this breakout session at the convention, it becomes clear that the state needs to be certain to incorporate the voice of individuals receiving services into the transition planning, implementation and into the quality improvement process to insure optimal quality, oversight and transparency. If we rely only on providers and staff (serving individuals and DHHS staff) to report, evaluate and provide oversight, we miss out on hearing directly from the individual receiving the services.

We would encourage DHHS to work with the disability community to educate Nebraskans about what Home and Community Based Services are, how they are being changed under the new HCBS rule and also prior to any waiver amendment or renewal. Individuals receiving services and organizations supporting them know where there are gaps and barriers. We need to work together to improve and eliminate these and make certain that our system incorporates choice, participation, and independence into all aspects of home and community based services.

Thank you for allowing us to provide comments on this very important issue. Home and Community Based Services are an integral part of community access.

Kathy Hoell, MPA  
Executive Director  
NE Statewide Independent Living Council  
NESILC  
215 Centennial Mall South, #210  
Lincoln, NE 68508  
402.438.7979  
Fax: 855.427.1554  
[Kathy@nesilc.org](mailto:Kathy@nesilc.org) or [khoell@cox.net](mailto:khoell@cox.net)  
[www.nesilc.org](http://www.nesilc.org)







October 14, 2014,

Dear Christina Mayer and Nebraska DHHS Staff,

RE: Nebraska's Draft Transition Plan for Home & Community Based Services

The Nebraska HCBS Coalition is composed of a broad and diverse group of stakeholders representing aging, physical and developmental disabilities, traumatic brain injuries, mental health, independent living, self-advocates and other groups who are interested in Medicaid long-term services and supports within the community. The HCBS Coalition was formed as one means to address the new CMS regulations redefining HCBS but also to acknowledge the recent incorporation of the federal Aging, Independent Living and Intellectual and Developmental Disabilities offices into the Administration for Community Living.

The Nebraska HCBS Coalition would like to thank the Department of Health and Human Services staff for meeting with us and for your extensive work on the Draft Transition Plan for Home and Community Based Services. We appreciate that the Department is now offering four face-to-face meetings with stakeholders in locations across the state per suggestions from advocacy agencies. We would also like to acknowledge that the Department has had to respond to many federal requirements in this process and appreciate the efforts that have been made to address these. To that end, the HCBS Coalition would like to offer our members as a resource to the Department as we would like to have involvement as the Department works to support these processes, for example identifying and creating plans to address settings and procedures found out of compliance with the Center for Medicare and Medicaid's new rules and the quality improvement process.

In addition, we propose the following considerations related to the state's HCBS transition plan:

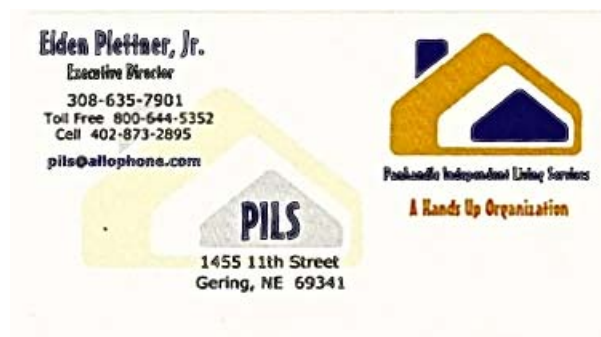
- Provide the final transition plan written in a more easy to understand format including a summary narrative for each Waiver. In addition, alternative formats need to be provided such as in braille or an audio recording insuring true stakeholder engagement.
- Provide additional details in the final plan on the settings that the Department currently believes does not fit the new regulations for home and community based settings in the final plan.
- Hold public hearings to detail the settings, processes and providers that need heightened scrutiny. Take public comments for 30 days and provide the methods that the state will be undertaking to assist these providers/settings to come into compliance.
- Replace the language "community-like" with "home and community based" (making the document more consistent with CMS' language) in the final transition plan submission to CMS. Using consistent language helps to set high expectations and insures that the next administration will use the same language for interpretation.
- Identify and detail the personnel, methods and processes currently in place for the "quality improvement process" in the final transition plan. The quality improvement process needs to have conflict-free, on-site evaluation with transparency and process in place so that individuals in services and staff know the process to report concerns.
- Incorporate the HCBS Coalition into the quality improvement process and adopt the National Core Indicators<sup>1</sup> to access the outcomes of services to individuals and families.

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<sup>1</sup> <http://www.nationalcoreindicators.org>

- Post all stakeholder comments on Nebraska DHHS' website on the same page as HCBS Transition Plan.
- As a standard practice moving forward, post upcoming waiver amendments and/or renewal applications on the same page on the HCBS Transition Plan website; assuring optimal transparency and acknowledging stakeholder input is vital to the successful implementation of these processes.
- Identify and notify key advocacy organizations, for example via the HCBS coalition membership, regarding waiver renewal applications or amendments; this is equally critical to a transparent and efficient process.

Again, we greatly appreciate the Department's significant work on this draft plan and would like to again state that the HCBS Coalition's members stand ready to serve as a resource to you through this process. Please contact Kathy Hoell, Executive Director of the Nebraska Statewide Independent Living Council (NE SILC) with future communications and she will forward these to the HCBS Coalition members.



**Comment of Disability Rights Nebraska  
on Home and Community-Based Services Transition Plan  
October 15, 2014**

**Bradley A. Meurrens  
Public Policy Specialist**

Disability Rights Nebraska is the designated Protection and Advocacy organization for people with disabilities in Nebraska. We appreciate this opportunity to comment on the proposed transition plan for home and community-based waivers in Nebraska.

It is difficult to gather a clear conceptualization of how the state plans to proceed to accomplish transition. The format of the Nebraska plan is not easy to read and it is difficult to gain a full understanding of the transition process or goals.

California and Oregon, for example, have produced 12-page and 14-page transition plans, respectively, that describe their plans in a narrative format. Nebraska's plan is simply a 70-page spreadsheet work plan. Reading the matrix, while helpful for department staff when deciding what tasks will be assigned to achieve a set of benchmarks, is not "user-friendly" when trying to help the public, service recipients, or stakeholders to understand what the goals are and how Nebraska plans to accomplish those goals. The overall goals of the federal regulations are known as are the minute details of tasks, schedule, and actors involved in the matrix, but what is missing is a narrative description of how the details create the path to transition.

Furthermore, in the September 5, 2014 "Statewide Transition Plan Toolkit for Alignment with the Home and Community-Based Services (HCBS) Final Regulation's Setting Requirements", CMS has stated<sup>1</sup> (emphasis added):

"What does CMS expect to see in a Statewide Transition Plan? Presence of the following items will facilitate CMS review of the states' submitted plans:

- A **detailed description** of the state's assessment of compliance with the home and community-based settings requirements and a statement of the outcome of that assessment.

<sup>1</sup> <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Statewide-Transition-Plan-Toolkit-.pdf>, p. 4-5

- A **detailed description** of the remedial actions the state will use to assure full compliance with the home and community-based settings requirements, including timelines, milestones and monitoring process.
- When relocation of beneficiaries is part of the state's remedial strategy, the Statewide Transition Plan should include:
  - An assurance that the state will provide reasonable notice to beneficiaries and due process to these individuals;
  - A **description** of the timeline for the relocation process;
  - The number of beneficiaries impacted; and
  - A **description of the state's process** to assure that beneficiaries, through the person-centered planning process, are given the opportunity, the information, and the supports to make an informed choice of an alternate setting that aligns, or will align, with the regulation, and that critical services/supports are in place in advance of the individual's transition."

We do not believe there is enough explanation or description in the proposed transition plan for Nebraska. The lack of description will have a direct impact on how well the public, service recipients (and their families), stakeholders, and perhaps key staff (such as service coordinators) understand the new federal rule and how to apply the rule to individual situations.

The proposed transition plan includes data and performance metrics, for example page 2 of the TBI waiver matrix (page 30 of 70 of the comprehensive draft transition plan), but there is scant description about what data will be collected (or how it will be collected) and little identified public, recipient (and family), or other stakeholder input into the types of data the state will collect.

Educating the public, and especially those individuals receiving services, about the new federal regulations is critical to achieve the goals set forth by the regulations, to ensure accountability, and to receive high quality public and stakeholder input. Public and stakeholder input has been recognized as an integral part of making the new regulations effective and accountable. However, the paucity of description will have a

direct impact on the quantity and quality of public, stakeholder, and service recipient (and family) input.

It is our belief that not enough attention has been paid to educating stakeholders, providers, and service recipients (and families) about the nature of the new federal rule (let alone the transition plan), how it will impact service recipients and providers, and the process by which the rule will be implemented (e.g., facility assessment process and appeals, who is performing assessments, data collection, etc.). Stakeholders have basically been forced to educate themselves. This has been compounded by multiple versions of the proposed rule creating confusion among stakeholders.

Additionally, the proposed transition plan mentions stakeholder engagement and public/stakeholder outreach, but there is little description regarding how this will be achieved and what opportunities will be available for input regarding segments of the transition plan implementation.

We would suggest that the transition plan include and clarify more opportunities (at all stages) for the relevant state departments to reach out and educate providers, service recipients and families if applicable or appropriate, advocacy groups or stakeholders and the public about the transition plan; the pertinent federal regulations regarding any particular waiver; what initiatives are planned to implement the transition; how the public, service recipients (and family), and other stakeholders can participate and support the transition process; and how far the state is along in meeting its benchmarks.

We note that in Oregon's transition plan<sup>2</sup>, attention is directed at educating all relevant stakeholders. Pages 6-8 of the Oregon plan describe activities the state will perform to educate individuals and families, service providers, and service delivery staff (e.g., case managers, service coordinators, etc.) independently about the requirements of the new rule and person-centered planning. The Oregon plan also describes the planned development and dissemination of educational materials for and to each of these groups. Nebraska's proposed transition matrix lacks clarity in this regard. Since much of the responsibility for compliance monitoring will fall upon service coordinators (especially when assessing continuous compliance), it is imperative that the proposed transition plan include a description of educational activities for key system staff.

<sup>2</sup> <http://www.oregon.gov/dhs/dhsnews/Documents/HCBS%20Trans%20Plan-public%20comment%20draft.pdf>

Additionally, we feel the transition plan would benefit from some definitional clarification. For example, what is the meaning of “privacy”? How is that measured and assessed, using what criteria? Lack of definition can lead to erroneous assessments and unaccountability.

The transition plan does not provide much context to the workplan matrix. In particular, the Transition Plan Addendum’s explanation of the major requirements of home and community-based settings of the Aged and Disabled Waiver (A&D Waiver) and the Traumatic Brain Injury Waiver (see pp. 26-28 of 70 in the draft plan) overly simplifies some of (and omits others) the final rule’s criteria on residential settings deemed community-based<sup>3</sup>. We are also submitting a copy of the final rule’s description of what defines a setting as community-based with these comments. It is much more specific and comprehensive than what is described in the Transition Plan Addendum for the A&D waiver and Traumatic Brain Injury Waiver.

The proposed transition plan recognizes there will be settings which will be presumed not to meet the new federal rule standards. The proposed transition plan indicates the preferred course is to submit evidence to CMS for the “heightened scrutiny” process, rather than work collaboratively to change these settings so that they can be in compliance. Nebraska should identify these settings specifically, conduct site visits to the settings and include assessment input from people who live, work, and receive services in those settings.

It is unclear from reading the matrix how assessments of certain requirements (e.g., location adjacent to an institution, provider compliance) will be handled and by whom. We would suggest that there be independent compliance monitoring of facilities under the auspices of the new federal rule. This independent monitoring should utilize the input of providers, service recipients and family members, and other stakeholders to ensure that there is an accurate and accountable assessment of facility and service provider compliance. Service coordinators will be mainly responsible for ongoing compliance monitoring, which only serves to strengthen the need to educate staff about compliance requirements under the federal rule. The high turnover rate for service coordinators makes continuous education imperative.

<sup>3</sup> See §440.301 and §440.530, pp. 3030-3031, Federal Register, Thursday, January 16, 2014, available at: <http://www.gpo.gov/fdsys/pkg/FR-2014-01-16/pdf/2014-00487.pdf>

We would also suggest that Nebraska include in the transition plan opportunities to train families, individuals, advocacy organizations and staff working in community programs in values-based philosophy. The federal rule and values-based philosophy are congruent. We feel this opportunity would provide educational values and strengthen understanding of the purpose of the new rules.

We suggest that a place to incorporate a values-based orientation is the training and other practices identified on page 18 of the Comprehensive Matrix:

“Routinely review and revise Service Coordination hiring tools, orientation, training curriculum, monitoring tools and other supports to ensure a continued focus on person centered practices, recognition of and advocacy for individual rights, and ensuring that all individuals are supported in the most integrated settings possible”.

A values-based orientation reinforces the stated outcomes of the routine review above:

“Service coordinators have the skills and tools to facilitate planning that reflects individual needs and preferences and conduct plan monitoring to ensure individual rights, optimize independence, facilitate choice and maximize opportunities to access community and receive services in the most integrated setting”.

Disability Rights Nebraska has developed programs to provide values-based education and training. We would be happy to discuss opportunities to work with appropriate agencies to incorporate a values-based training into the review and orientation process noted above.

The new federal regulations have created an opportunity to realize a cultural shift in the way home and community services are provided in Nebraska. The new federal regulations are a step in the right direction and we are willing to collaborate, in the capacity that we can, to help advance a better way for Nebraskans with disabilities.

## DHHS HCBS Public Comments

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**From:** Brett Hoogeveen <BHoogeveen@qliomaha.com>  
**Sent:** Wednesday, October 15, 2014 4:44 PM  
**To:** DHHS HCBS Public Comments  
**Subject:** HCBS Waiver Comment

HCBS State Waiver Transition Team:

I would like to thank you all for your hard work in preparing the State for this transition process. As an employee of a waiver service provider in the State of Nebraska, I appreciate the goals of CMS to ensure that individuals receiving waiver services are receiving those services in a non-restrictive, community setting.

My comment pertains to what is considered a community setting. I just wanted to say that I appreciate the fact that, as you say on your Transition web page: "In response to comments received during the rule making process, CMS moved away from defining these settings based on specific characteristics. The final rule requires that "community-like" settings be defined by the nature and quality of the experiences of the individual receiving services and applies to both residential and day services settings."

I fully support this shift from looking only at the physical characteristics of a facility or environment to instead evaluating the nature and quality of experience of the individual who is receiving services. Some of our most specialized and most sought after waiver services (the TBI waiver for example) are provided in settings that may not reside strictly in a traditional neighborhood community; however the TBI waiver provides an invaluable resource to our State. If we have providers who are meeting a clear need, who are making every effort to ensure the privacy and independence of their clients, and who have happy and satisfied clients and families, I can't see how it could be in anyone's best interest to consider removing those settings as waiver options when our State already struggles at times to provide enough appropriate housing and support for individuals with disabilities.

Regards,

Brett Hoogeveen  
QLI



## DHHS HCBS Public Comments

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**From:** shawna mason <[shea2402@gmail.com](mailto:shea2402@gmail.com)>  
**Sent:** Wednesday, October 15, 2014 7:28 PM  
**To:** DHHS HCBS Public Comments; shawna mason  
**Subject:** Healthy Environment

A good clean beautiful home like place I think would be very effective in in the criticale state of recovery. And I would also like to see them put in washers and dryers do it yourself laundry. And on weekends make brownies. And a Place to go outside. I'm one if I don't get out to the country side once in a while I don't do so well. My mom noticed something in my voice and asked, Do we need to go somewhere? I asked what do you meen? Well the country side. I would not expect to be driven to the country side but just to help you understand that the outdoor time is important to me too. And doctors not evaluating people on Sunday's a religious holy day Sabithday unless the behavior is to odd to ignore. It doesn't add to the terror a person goes through as they recover.

So basically I love and agree to a more homelike setting I think you have a good plan.

[shea2402@gmail.com](mailto:shea2402@gmail.com)

Thank you  
from

Shawna

## **Record of Verbal Comments**

### **Home and Community Based Services Transition Plan Draft**

**Date:** October 7, 2014

**Location:** Omaha, Nebraska

**Name of Individual:** Mary Angus

My name is Mary Angus I represent Adapt Nebraska and my first comment is and it may be my only comment that we cannot comment on a plan for a plan. We cannot provide intelligent comments on a plan we have not seen. It's a matrix. In fact it has not been written make comments on a plan that has not been written. We cannot comment on a nonexistent plan.

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### **Home and Community Based Services Transition Plan Draft**

**Date:** October 7, 2014

**Location:** Omaha, Nebraska

**Name of Individual:** Julie Kaminski, Leading Age Nebraska

Hi Julie Kaminski leading age Nebraska and I guess I have several comments and my hope would be they would help craft the plan so the fact we don't have a plan isn't as concerning to me. As hopefully the comments we share can be used as you craft the plan. You mentioned that you think Nebraska is different from any other state so I think being able to take into account some of those unique pieces and one of them would be memory care units and it's going to be very challenging for memory care in the assisted living setting to have those locked doors and the resident to have a key. So that is one of our concerns I think as you craft the plan to address that. A couple other pieces are how you're going to define community integration and full access to the greater community. So those are very specific in CMS's requirements and I guess we would like greater clarification around that as to how an assisted living meets that criteria. You know I know that many of them will bring individuals into the assisted living setting and you know how are you going to define that I guess would be helpful. Another piece would be the land lord tenant laws and how those will integrate with the existing discharge and grievance processed that are in the assisted living regulations because I believe that's a piece of the CMS ruling is the land lord tenant laws. So knowing how those are going to mesh together would be helpful as you create that plan.

Umm...Seems like there was one more. Choice of roommate, that's another piece especially in the memory care units. We always try to give that piece but I think especially in the memory care units choose of roommate might be one and then many of our rural members their assisted living is connected to the nursing home and I know when they defined those residential settings they said they can't share activity space and they can't share dining space and unfortunately there are some small rural assisted living locations that is the case so I think keeping those things in mind while you create the plan. I think that's it.

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### **Home and Community Based Services Transition Plan Draft**

**Date:** October 7, 2014

**Location:** Omaha, Nebraska

**Name of Individual:** Kate, Eastern Nebraska Office on Aging

I am Kate with Research and Development with the Eastern Nebraska Office on Aging and my comment is when it talks about resident participation for the informal activities in the communities going shopping, church, or lunch and friends are the facilities going to be expected to pay for this transportation for these other activities that they are going to because it can be a challenge already with them providing the required medical transportation. That would be a real concern to me also and that that would be taken care of. Thank you.

## **Record of Verbal Comments**

### **Home and Community Based Services Transition Plan Draft**

**Date:** October 7, 2014

**Location:** Omaha, Nebraska

**Name of Individual:** Janelle Cox

Janelle Cox with the Eastern Nebraska Office on Aging, aged waiver. I wanted to expand a little bit on what Julie brought up about community integration and I think another piece we need to keep in mind especially in assisted living is that we do have family and informal supports that are there to provide that community integration piece typically those things happen on the weekend where residents aren't going to want to participate in activities throughout the week. They rest. They save their energy for family time during the weekend and get that community integration piece which you know in the assisted living and the documentation that may not always be noted where a resident is going and how they are spending their time with their informal supports so we want to make sure we keep that in mind. With the memory care units and the assisted living units I feel very strongly that we need to advocate for that in Nebraska. In working with folks with dementia in seeing the difference between the nursing facility setting and the assisted living setting, those are day and night and folks that are in that early sometimes moderate state of dementia if they are placed in that nursing facility setting they want out. And we need to be able to provide safe alternatives. I believe and think that's what the waiver was set up for. And I think that in providing evidence we need to use CMS's own verbiage back to them because some of things in the very beginning of this program we were insuring folk's health, safety, and welfare and we need to be able to do that for those folks with dementia that can have a lesser restrictive environment. But we have to be able to keep them safe. Along with the choice of roommate this would be a welcome site for the aging population where sometimes the dementia units get limited because of that fact that we don't have an established relationship. I guess I see it on the flip side, I see it as a good thing for us because a lot of times folks will be able to live very in a room that maybe didn't have a long standing relationship at that point in time and we see the adverse effects when you uproot a dementia client from a familiar setting and place them somewhere else. So I think in that sense we could actually see this as a place to make some progress.

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### **Home and Community Based Services Transition Plan Draft**

**Date:** October 7, 2014

**Location:** Omaha, Nebraska

**Name of Individual:** Michael Chittenden

My name is Michael Chittenden I am the executive director of ARC of Nebraska I serve on the Governors DD Advisory Committee. My first comment is that in concern is we had a change in venue for today and I don't feel there was adequate notice given for that. Secondly as I tried to find my way to find the building there was no signage anywhere outside of the building to show where this was to take place so people with cognitive disabilities might have a hard time finding this area. In which to give comments so we might have a very representative field of people providing comments today. As to the plan, and I use that term vaguely because I think that is the key to this plan. It's Vague. It talks about community like not community based. And if we are going to really offer services with disabilities or aged or whatever we really need to community based. Having access to community is not being in and participating in and being in the life of the community. The second comment to the plan would be like it as already put out there by some other people it's a matrix not a plan. People with cognitive disabilities would have a very hard time understanding it. I would like to think of myself as not having any cognitive disabilities, I have a hard time understanding it. So the plan needs to be more concrete. It needs to have better timelines that are currently projected they are not realistic at all. With the Plan CMS talked about being able to assess and pass heightened scrutiny. Who's doing the assessment? Where's the transparency in that? Who is being represented through that assessment process in particular people that are being served through these waivers? Are they part of the assessments and their families, and their advocates and their representatives? Where's the transparency when the assessments are done? Where are they posted? How is that information being processed and put out into the general public and how are we taking comments on a continual basis. Because any plan that is put out there needs to be constantly updated and redefined. I also have a big issue with the State of Nebraska self-policing its self-heightened scrutiny. This is a state that continually lacks an Olmstead plan and because of that there is no heightened scrutiny available that we can see. We would like heightened scrutiny to come from not only CMS but through stakeholders throughout that state. Finally antidotal evidence presented to the ARC of Nebraska, it shows that realistically currently and proposed person centered planning is not being used. It's planning to fit the services that are being offered not services that

are being offered to fill needs. I've even heard the statement "if you don't go to a day program you don't get services" and that's not appropriate. If we are going to be person centered plan those plans need to be built around the needs of the individuals and not around the services being offered. Thank you.

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### **Home and Community Based Services Transition Plan Draft**

**Date:** October 7, 2014

**Location:** Omaha, Nebraska

**Name of Individual:** Janine Brooks

I am Janine Brooks. I usually come to these things. My daughter is 28 years and she has a primary diagnosis of autism and a secondary diagnosis of ADHD and a ??? disorder. For the last eight years under Medicaid waiver long term care and disabled, which is what she has been on since she is not eligible for DD services because her autism wasn't diagnosed before age 29 or age 18 and because she is not eligible for PASS. This is what has been offered to her. That or a recommendation by Dr. Adams to go to jail. Umm it is not person based. My person is a prisoner in her own home. She is not allowed to participate in her own treatment. She asks for certain services such as an appropriate day services, she is denied that. I believe this plan including the waiver program summary including the transition plan addendum is grossly missing a major segment of our population adults with autism. Since we do not offer an autism waiver under this program which is what our adult autistic individuals are put on if they are living in the home or married. This is what they are offered. We need to offer them options allow them access to places where they can get things like the opportunity to gain skills. The opportunity the gain cognitive skills to maybe move further on their own. Programs in Omaha currently do not offer those. I have letters I would like to submit as well as my summary comments that show why they won't take anyone with autism in these programs. I'm not saying we need an autism but I am saying we need to modify this plan to include that segment of the population.



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**Date:** October 7, 2014

**Location:** Omaha, Nebraska

**Name of Individual:** Name not provided

I have another comment. It's not in the plan but it has to do with the individuals on this plan that may have difficulties advocating for themselves. So if they don't have someone like a family member or a legal guardian overseeing their care. They are pretty much not being taken care of. I know this from others I take care. I would like to see in addition to this, is somebody these people have an option to talk to besides the case manager. Magellan has an advocate that you can all and talk to about your issues with the programs. I ask why none of the Medicaid waivers have this option. It should be something that is very clear. If you have cognitive issues it is very difficult to figure out what to start doing.

I am also a representative a network of advocates in the state and I'm also the niece a in a woman in an assisted living setting. I'm not sure if she is on the A&D waiver but she is on a Pace program so I'm also reflecting that family caregiver role. And I have another one but I need to be in a memory unit (LONG PAUSE). I remember my other comment. I'm sorry. I knew what the building was and the room was. I had difficulty finding it. I live about a mile away. I had difficulty finding it and there was absolutely no signage had there been one on Sorenson. There was NOTHING. I went down to the other place. There was no signage. I live here a mile away and I could not find it. (Voice responding unable to hear)

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### **Home and Community Based Services Transition Plan Draft**

**Date:** October 7, 2014

**Location:** Omaha, Nebraska

**Name of Individual:** Michael Chittenden (second comment)

Your true stakeholders have cognitive disabilities a map is not going to help. Signs, arrows, they need directions you know you really need to think who your customer is not necessarily you advocates or other stakeholders. You really have to go to that person who is your base consumer and make sure they know. My name is Mike Chittenden and I approve this message.

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### **Home and Community Based Services Transition Plan Draft**

**Date:** October 7, 2014

**Location:** Omaha, Nebraska

**Name of Individual:** Sara Swanson

My name is Sara Swanson. Has the state considered using the National Core indicators for quality assessments in all the programs? They have some great survey tools for families, individuals, and providers and I see that there is like the majority of the states in the United States are using this standard. So I would consider looking into that.

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### **Home and Community Based Services Transition Plan Draft**

**Date:** October 7, 2014

**Location:** Omaha, Nebraska

**Name of Individual:** Mary Angus (second comment)

My name is Mary Angus and I remember the comment. Well it's a question. I want to know when the transcripts or the comments, these hearings and the states response which will all be sent to CMS. I want to know when they will be on the website for the public to view. I have never seen that done before and that is the only way to be transparent for the comments from across that state and the responses to those comments be available on the website.

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### **Home and Community Based Services Transition Plan Draft**

**Date:** October 7, 2014

**Location:** Omaha, Nebraska

**Name of Individual:** Mary Angus (third comment)

This is Mary Angus, maybe for the first time I don't remember. I was wondering if you have the provider self-assessment tool. The date for completion was 9/30/2014.

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### **Home and Community Based Services Transition Plan Draft**

**Date:** October 7, 2014

**Location:** Omaha, Nebraska

**Name of Individual:** Janine Brooks (second comment)

I should also comment I am a graduate student in English Composition in English Lit and this documentation that presented here today is horrid. It's very difficult for someone for cognitive disabilities to read. That is part of the reason my daughter did not come today. It was so spread out she couldn't make heads or tails about what she should be talking about. The plan is not outlined in a way that is favorable. I want to take it a step further and say the website the plan comes from is in very poor taste as well. Yesterday I was talking to someone from long term care disabled services because my daughter needs additional help right now she cannot access. Which goes to show how personal care is involved because she has been needing this care for over a year. We have adult protective services investigating me because she's not on medication and she's not receiving appropriate services. But this is what she is offered as a solution. On the website it will tell you, you can go to a day program if you have emotional, mental, or physical issues. In Omaha, even though Lincoln doesn't seem to be fully aware of it, the only two programs you can access on Medicaid waiver are community alliance and friendship program both which require a mental health diagnosis and if you don't have one you are screwed. My daughter is not able to access the autism center of Nebraska she is not able to access Ollie Web. She is not able to access Angel Guardians. Those are all very good programs in the state or city of Omaha that have very positive results. But they are all DD funded. I want to know if we are going Person services why don't we treat them like individuals and look at their individual needs. The other comment I have to make has to do with my neighborhood. I've been in my neighborhood for 27 years. It's supposed to be community based care. That would mean I would think that not only is the care in of my child, my adult child, but also for myself, her care, the people coming into our home, and the people that live around the home. My daughter has gone out numerous times flashing knives at little kids threatening to kill herself. She can't go to a residential treatment center because her level of care are to high for someone like Emanuel or Lasting Hope to handle. So she is sent back home for me to take care of and the only support I have with the Medicaid waiver is transportation and also her being able to have a ??? in the home. So why can't sure obtain services that she needs to allow her to live as the plan suggests as independently as possible.

In the summary thing that they have the transition plan setting requirements for home and community based services on page two in the summary it states if there are opportunities to seek employment in work in competitive settings and to engage in community life, control personal resources, participate in the community just as people who live in the community do. Presently, as far as I know Medicaid refuses to offer any job opportunity for those on the aged and disabled waiver plan. I was told yesterday that that is not the responsibility of what the aged and disabled waiver is about. Also in regards to these some concerns I have a concern in regards to her quality of work. If she is not able to get out to work to gain those skills to work how can she ever achieve it. For some of these program connections vocational rehab. To get into their programs to go to a day program she has to have a job first. How can one get a job if they don't have the skills for it. If we are going to have person based, person centered care a person needs to be directly involved. And we need to look for options when we are not able to provide that care for them whether it's Medicaid waiver, DD, or Behavioral Health.

In the definition of who they serve they mention adults between the ages of 18 and 65 with physical disabilities but they do not mention adults with other types of disabilities that would probably be cognitive and mental disabilities on Medicaid and Long Term Care. This is not specified in the new plan. Thank you.

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**Location:** Omaha, Nebraska

**Name of Individual:** Kate, Eastern Nebraska Office on Aging (second comment)

Kate with Eastern Nebraska Office on Aging. So we have time to work with our facilities because I do have the fear which I shared with Gwen in past about some of the animosity we may get just due to the functioning of their facilities to get some of this done. The facilities I worked in, in Northeast Nebraska, I've worked in 41 facilities. I know the rural I know the metro area here. They are doing a lot of these things but not all of them and I could see very valid concerns with some of the requirements. We just want to make sure there is patience and understanding and support with the aging programs and the DD programs with helping and working with these programs so it goes forward and does not, is not detrimental to the individuals we serve now. The time frame can be very scary and cause challenges



## **Record of Verbal Comments**

### **Home and Community Based Services Transition Plan Draft**

**Date:** September 30, 2014

**Location:** Kearney Public Library, 2020 1<sup>st</sup> Avenue, Kearney, Nebraska

**Name of Individual:** Tim Kolv

My name is Tim Kolv K-O-L-V as in Victor. I am the executive director and CEO of the KFDE foundation of Disability education. One the things that troubles me about the language of the plan is the reference to Community like because it present a gray area. CMS regulations aren't quite distinct about making the same as making a difference between in that which is and that which is not. So using the term community like presents doubt. Assisted living in regulations, CMS is saying they cannot be attached or in adjacent to a nursing home and be an HCBS services. Now that so, I realize that community like is not going to be changed the language of CMS documents. There needs to be a very clear distinction. I hope the methods being used to make those decisions are followed. There needs to be a clear distinction as to what is and what is not an HCBS service. Another area I am concerned about is the the DD Community there is problem with Day services in Nebraska for persons with developmental disabilities. There is a problem in that we currently have a DD waiting list and it is a very big list. That cannot get services so there is going to be a "trickle down" service for those people rather direct immediate services that is available direct with the other waivers. I think that's it.

## **Record of Verbal Comments**

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**Date:** September 29, 2014

**Location:** Kearney Public Library, 2020 1<sup>st</sup> Avenue, Kearney, Nebraska

**Name of Individual:** Lisa Mercer

My name is Lisa Mercer. I advocate for a number of adults with DD. I also served on the board of directors for buffalo county. I am wondering if there is a feedback Methodism if one will be put in place for people to report concerns. To report concerns or to log complaints about a particular providers. For example we have a number of homes in Kearney and we have our ARC, is very active in providing opportunities, community opportunity activities, inclusive sports for our young adults. It has in the past been that some of the homes that main staffing especially on the evenings and weekends are a young college age. We have offered to come and get individuals to come to parties or picnics or girls nights out. And the response has been we do not have enough staff, when they have enough staff. Our perception is they have enough staff but it takes someone motivated to help the guys shave and put on clean cloths to come to the events and we are talking quality of community life. Living that allows them to have that social connection. I ben lamentably lacking in some instances. What sort of mechanism is there to help us with that. In the past when we've mentioned it. The young adults take the hit. It hasn't been a popular thing to advocate for them.

**Record of Verbal Comments**  
**Home and Community Based Services Transition Plan Draft**

**Date:** September 29, 2014

**Location:** Kearney Public Library 2020 1<sup>st</sup> Avenue, Kearney, Nebraska

**Name of Individual:** Linda Zennell

I have a question. Can you tell me about cooking in assisted living... I'm sorry I'm Linda Zinnell and have in assisted living. And one of your comments was they are going to be allowed to cook in their room. I wanted to voice a concern that they need to be able to determine the safety of them cooking in their room per individual bases and they have permission to do that.

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**Name of Individual:** Name not provided

We rent both buildings separately and one is skilled and one is assisted living. I guess that bothers me a little bit. The regulations say not adjacent or attached. To Tim's comment, we have residents there that there only there we give 3 meals a day and activities to daily living themselves. We limit to them a setting where there just for that we limit a lot of people. Not everybody in our assisted living are not able to that for themselves. Assisted living people who need 3 square meals a day and give medications on time because at home they weren't getting that.

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### **Home and Community Based Services Transition Plan Draft**

**Date:** September 29, 2014

**Location:** Kearney Public Library, 2020 1<sup>st</sup> Avenue, Kearney, Nebraska

**Name of Individual:** Dawn Hansen

My concern I guess what my concern is we're talking about where were from we have a group facility. I know a lot of them aren't from group facilities. Ok, we're in a different situation we have individuals that have been taken out of the group homes and now live with family members or whatever and they're in the community based program where they are out in the community. Who is it who decided what their activities out in the community are? Are you saying that should be the person in the program the individual on what they want to do like she said go to dances and stuff like that? Who determines that? An like we have social workers going no you need to do this with them, you need to do that with them or you need to that. What if the individual doesn't want to do that and certain disability situations you can't everybody to a dance. They might not enjoy that or you may have a person that can't have shots and the people at that dance is a hepatitis carrier so they can't go do those activities. Who determines the activity based for the community based waiver and what they should be doing out in the community?

On the Medicaid waiver for assisted living I know there are a lot of facilities no longer doing that care. Has the state done any surveys or projections as to how many more assisted facilities are going to take less there won't be any availability for any of them to be in the assisted living under the Medicaid waiver program.

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**Name of Individual:** Name not provided

I have a comment similar to Linda's. I want to go on the record of stating that assisted living fulfills a crucial niche in our care in our services to totally think they are not in line I don't believe is accurate and I don't think is fair to the facility. Just because they are hooked on to a nursing home does not mean they don't have the philosophy that they have a separate staff maybe it's their adjacent through a door that it's available if you have a 911 or emergency call that they don't have to run across the parking lot to get there. I think their interpretation is going to be really important and being able to justify it on a piece of paper, but I agree what Linda what they said back here about working with what we have because if those go away there are a lot of people. I'm an RN I worked home health hospice, home infusion those home based services, we just can't do without that huge piece of the care delivery system or we are hosed. Where will these people go? They don't have family so in my experience in our assisted living they have a better social life than I do. They have a bingo comes in and they have birthday parties and they have cards. I think that is over and above the call of duty. They don't have to truck in the freezing cold to church because the church ladies bring birthday cake and pass out presents for everybody who had a birthday in sept. I think writing it in the plan and justifying and showing the rationale as to why we do that is really important. It also makes me another comment on that I have with nursing homes and nursing facilities they have surveyors who come in and spot check and make sure they are in compliance. I'm assuming maybe a really strong assumption that in the case where for example in the assisted living is an outlier. I would like to see them have a surveyor go in and see how they do comply because I think a lot of them can comply even if they are a hook on facility. I think the definition is faulty, but we're stuck with that definition. So, you made a very salient point that what is the interpretation of that definition and I think they should meet the definition.

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### **Home and Community Based Services Transition Plan Draft**

**Date:** September 29, 2014

**Location:** Kearney Public Library, 2020 1<sup>st</sup> Avenue, Kearney, Nebraska

**Name of Individual:** Jane Ludlow

Jane Ludlow. My question is the home providers and the day service and home services. With these choices where to go and what to do becomes a problem with transportation. Are these waivers going to provide funds for the transportation of these people. Because transportation the costs are higher and higher and you have to have drivers and supervision and things. My question will that provide any financial transportation support?

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**Date:** September 29, 2014

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**Name of Individual:** Sarah Briggs

I was just going to point as well, my name is Sarah Briggs. That for the A & D waiver for example they talk about identifying the distinguishing in the likely not settings by March 31<sup>st</sup> of 2015. So, I think it will be interesting to for the providers and everybody to understand what will that process be for making that distinguish between the likely not and likely in and how do those lists get made? Because it says the outcome will be a list.



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**Name of Individual:** Name not provided

Again, in the same day service or residential setting you have people who have different function, brain functions levels. You may have someone who is very high brain functioning that can do a lot of things on their own and you may have one that's not. And so, what she is saying if they have to go in 2 different directions, how are you going to get them there because the one that is not high functioning is going to need supervision to be able to be out in the community doing what they want to do. And so they're talking about these community based services, but you're going to run in a lot of issues in the community group homes. These people in the community doing something they all want to do at the same time if you only have 2 staff people and 4-5 clients who want to go into different settings and I think that's when you are going to run into the situations. That goes back to. That's not an issue for me because I'm in a single based situation with the person I work with, but then we're going back to the boundaries of sometimes you're talking the assisted living, sometimes you're talking about is this the waiver just to do with assisted living facilities and group homes. What about the residential home how is it effecting a person that lives at home with a guardian. This whole waiver. Does the social worker at that point have a right to say well I don't think this community based waiver no I have think you should take him to the library. Well, what if he doesn't like going to the library? But he can't talk, but we know what know what he likes to do by his actions obviously as a worker that takes him places you know what they like and what they don't. Why are we restricting it you need to do this when obviously they don't like that. I mean that's what I'm asking, Who do you speak to as to where those guidelines are? Who do you address those questions when the social worker says, I don't know but I think you should be writing this because my supervisor says you know they should be doing this. Where do we address those questions?

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**Name of Individual:** Maxine Lien

To answer your question it's written very broadly for a reason. It's a good good thing that we now write it broadly. The only stipulation is the safety end of it. So it's common sense. Whatever the person centered plan says. It seems like your SC and your team doesn't understand Person Centered Planning. If they actually said "they're going to go to the Library" that is wrong wrong wrong. You pick up the phone and you call Jodi Fenner, she's the head of DD. They only know in Lincoln what we tell them. My son is 42 years old and he has a very good life. You know why? Because a service provider said to me "the squeaky wheel gets greased first" I have never forgotten that, and don't any of you that advocate for people forget that. I used to be a part of the Governor's Advisory Council. If you go on the DD State Site you can find a listing of the people on the DD council. They meet every three months. You just can't sit out here and whine. You have to speak. I'm very adamant about person centered planning and I bet you will be too now. I just go to the top. Start at the top, she'll listen.